DOCKET

No. 86-1387-CSX
Status: GRANTED

Title: John H. Mackey, et al., Petitioners
v.
Lanier Collections Agency & Service, Inc.

Docketed:
February 24, 1987

Court: Supreme Court of Georgia

Counsel for petitioner: Gleason,Thomas W., Goldburg,Charles R., Mathews Jr.,Ernest L.

Counsel for respondent: Pedigo Jr.,Carl S., Mahoney,Maureen E.

Entry	Date	Note	Proceedings and Orders
1	Feb 24 1987	G	Petition for writ of certiorari filed.
2	Mar 14 1987		Brief of respondents John Mackey, et al. in opposition filed.
3	Mar 18 1987		DISTRIBUTED. April 3, 1987
4	Apr 6 1987	P	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
5	May 29 1987	X	Brief amicus curiae of United States filed.
6	Jun 2 1987		REDISTRIBUTED. June 18, 1987
7	Jun 22 1987		Petition GRANTED..
			**********
8	Jul 14 1987		Joint appendix filed.
10	Jul 22 1987		Order extending time to file brief of petitioner on the merits until August 27, 1987.
11	Aug 1 1987		Record filed.
12	Aug 27 1987		Brief of petitioners John H. Mackey, et al. filed.
13	Aug 27 1987	G	Motion of National Conference of State Legislatures, et al. for leave to file a brief as amici curiae filed.
14	Aug 27 1987		Brief amicus curiae of California filed.
15	Aug 27 1987		Brief amicus curiae of United States filed.
16	Sep 2 1987	G	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
17	Sep 21 1987		Motion of National Conference of State Legislatures, et al. for leave to file a brief as amici curiae GRANTED.
18	Oct 5 1987		Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
20	Oct 5 1987		Order extending time to file brief of respondent on the merits until December 4, 1987.
21	Oct 5 1987		Maureen E. Mahoney, Esq., of Washington, D. C., a member of the Bar of this Court, is invited to brief
22	Oct 5 1987		and argue this case, as amicus curiae, in support of the judgment below.
24	Dec 4 1987	X	Brief amicus curiae of Lanier Collection Agency and Service filed.
25	Dec 14 1987		CIRCULATED.
26	Jan 9 1988	X	Reply brief of petitioners John H. Mackey, et al. filed.
27	Mar 11 1988		SET FOR ARGUMENT, Tuesday, April 19, 1988. (2nd case).
28	Apr 19 1988		ARGUED.

PETITION FOR WRIT OF CERTIORARI

86 1387

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

Farrington & Abbot, P.C.
P.O. Box 9378
Savannah, Georgia 31412

Attorneys for Petitioners

Of Counsel:
CHARLES R. GOLDBURG

QUESTION PRESENTED FOR REVIEW

1. Does the Employee Retirement Income Security Act preempt the states from exempting employee welfare funds or benefits from the state's own garnishment procedures?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, John H. Mackey, Don Klages, Gary G. Wise, Frank Ryan, Willie E. Sloan, Capt. John Wightman, Benjamin Flowers, Robert Jacobi, Melvin Andrews, James McIntire, Perry Harvey, Jr., and A. Fernando Torres, as trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia entered in the above-entitled case on December 2, 1986.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia is reported at 256 Ga. 499, 350 S.E. 2d 439 (1986) and is reproduced as Appendix A to this petition. The opinion of the Court of Appeals of Georgia is reported at 178 Ga. App. 467, 343 S.E. 2d 492 (1986) and is reproduced as Appendix B to this petition. The opinion of the

State Court of Chatham County, Georgia is unreported and is reproduced as Appendix C to this petition.

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on December 2, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), since the validity of a State statute is drawn in question on the ground of its being repugnant to the laws of the United States.

STATUTES INVOLVED

The relevant statutory provisions are § 201(1), § 206(d)(1), and § 514(a) of the Employee Retirement Income Security Act, 29 U.S.C. § 1051(1), § 1056(d)(1), and § 1144(a) and § 18-4-22.1 of the Official Georgia Code Annotated.

ERISA § 201(1) Coverage.

This part [29 U.S.C. § 1051-1061] shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than

(1) an employee welfare benefit plan;

ERISA § 206 (d) Assignment or alienation of benefits

(1). Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

ERISA § 514(a) Supersedure; effective date.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchaper III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

OCGA § 18-4-22.1. Garnishment of funds or benefits of pension, retirement, or employee benefit plans and programs which are subject to the Employee Retirement Income Security Act of 1974.

Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended, shall not be subject to the process of garnishment (1) until such funds or benefits are currently due and payable or transferable to a member of such plan or program or to a beneficiary thereof and (2) unless such garnishment is based upon a judgment for alimony or for child support, in which event such funds or benefits shall then be subject to the process of garnishment to the extent provided in subsection (d) of Code Section 18-4-20.

STATEMENT OF THE CASE

Petitioners are the trustees of the South Atlantic ILA/ Employers Vacation and Holiday Fund. The Fund was created pursuant to a collective bargaining agreement between the International Longshoremen's Association and the South Atlantic Employers Negotiating Committee.[1] The Fund provides vacation and holiday benefits to eligible employees in thirteen South Atlantic ports. It is an employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act. 29 U.S.C. § 1002(1).[2]

Respondent Lanier Colletion Agency & Service, Inc. is a collection agency operating in the State of Georgia. Lanier has obtained judgments againt twenty-three Savannah longshoremen who are eligible to receive vacation and holiday benefits from the South Atlantic ILA/Employers Vacation and Holiday Fund. None of the judgments represent claims for alimony or child support.[3] In November, 1984, Lanier instituted garnishment proceedings in the State Court of Chatham County, Georgia. Lanier sought to garnish the vacation and holiday benefits which were payable by the Fund to the Savannah longshoremen.

The Vacation and Holiday Fund answered the complaint in the garnishment proceeding, claiming that since it was an employee welfare benefit plan subject to ERISA, its funds or benefits were

1. International Longshoremen's Association, AFL-CIO ("ILA") is the labor organization representing longshoremen, clerks, checkers, and other waterfront employees on the Atlantic and Gulf Coasts of the United States. The South Atlantic Employers Negotiating Committee ("SAENC") is the multiemployer bargaining association representing longshore employers in the ports of Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Brunswick, St. Mary's Ferandina, Jacksonville, Tampa, and Port Manatee.

2. § 3(1) of ERISA defines "employee welfare benefit plan" as any plan, fund or program established for the purpose of providing *inter alia* vacation benefits. 29 U.S.C. § 1002. This Court has also recognized that a vacation trust is a welfare benefit plan within the meaning of ERISA. *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983).

3. Under OCGA § 18-4-22.1, garnishment is available to enforce alimony or child support obligations. However, it is undisputed that the judgments which Lanier seeks to enforce do not arise from alimony or support obligations.

not subject to garnishment under OCGA § 18-4-22.1. In an order dated March 20, 1985, the State Court of Chatham County upheld the garnishments. Despite the fact that OCGA § 18-4-22.1 unambiguously exempts employee welfare benefit plans from garnishment, the court referred to legislative history to construe the Georgia statute. The court concluded that OCGA § 18-4-22.1 did not protect welfare benefits from garnishment since the Georgia legislature had intended "to make Georgia law identical to the federal law." A-20.[4]

The Georgia Court of Appeals reversed and determined that vacation and holiday benefits were not subject to garnishment. The court held first that the language of OCGA § 18-4-22.1 clearly and unambiguously indicated that the Georgia legislature intended to protect vacation plans from garnishment even though ERISA does not provide such protection. A-8. Thus, the court of appeals held that the trial court erred in resorting to the legislative history of OCGA § 18-4-22.1 to determine legislative intent. *Id.* The court further held that the Georgia legislature was not preempted by ERISA from extending the prohibition against garnishment to welfare benefits. *Id.*[5] Despite ERISA's broad preemption provision, 29 U.S.C. § 1144(a), the court of appeals relied on this Court's statement in *Shaw* v. *Delta Air*

4. The legislative history of OCGA § 18-4-22.1 indicates that the purpose of the statute was "to provide exemptions from garnishments for certain employee benefit plans subject to the Federal Employee Retirement Income Security Act of 1974 as amended, so that the state law *conforms to federal requirements* for those plans." Georgia House Journal, Vol. II, 2758 (1981) (emphasis supplied). Although § 201(1) of ERISA, 29 U.S.C. § 1051(1), merely *excludes* welfare benefit plans from the prohibition against alienation of benefits contained in ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1), the state court apparently assumed that ERISA requires that welfare benefits be subject to garnishment.

5. Section 206(d)(1) of ERISA requires that "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). This provision against alienation of benefits applies to involuntary alienation such as garnishment. *Tenneco, Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983). In view of ERISA's specific prohibition against alienation of pension benefits and its express provision superceding state law, 29 U.S.C. § 1144, respondent argued that the state was preempted from exempting welfare benefits from the state's own garnishment procedures.

Lines, 463 U.S. 85, n.21 (1983) that, "[S]ome state actions may affect employee benefit plans in too tenuous, remote or peripheral a manner to warrant a finding that the law 'relates to' the plan." A-9. The court of appeals also noted that "The enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA with respect to welfare plans." *Id.* Thus, the court of appeals concluded that OCGA § 18-4-22.1 was not preempted by ERISA.

The Supreme Court of Georgia reversed and upheld the garnishments. The court held first that OCGA § 18-4-22.1 was indeed intended to protect welfare benefits from the process of garnishment. A-2. However, the court held that OCGA § 18-4-22.1 was preempted by ERISA. The court noted that ERISA § 514(a) provides that "the provisions of this subchapter . . . shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). In *Shaw* v. *Delta Air Lines*, 463 U.S. 85, 96-97 (1985), this Court held that "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Id.* at 96-97. The Georgia Supreme Court reasoned that OCGA § 18-4-22.1 "relates to ERISA [sic an employee benefit plan] since it purports to regulate garnishment of ERISA funds and benefits, a matter specifically provided for under ERISA . . ." A-4. In finding the Georgia anti-garnishment statute preempted, the court also relied upon statements of this Court in *Shaw* that ERISA imposes participation and vesting requirements on pension plans and sets uniform rules of fiduciary responsibility for both pension and welfare plans. 463 U.S. at 91.[6] Finally, the Georgia Supreme Court relied upon this Court's statement in *Shaw* that "New York's Human Rights Law is pre-empted with respect to ERISA benefit plans only insofar as it prohibits practices that are lawful under federal law." 463 U.S. at 108. The court reasoned that

6. The Georgia Supreme Court's paraphrase of this Court's opinion in *Shaw* suggests that the Georgia Supreme Court may not have recognized that ERISA's participation and vesting requirements do not apply to welfare plans. A-3.

OCGA 18-4-22.1 "prohibits that which the federal statute permits [i.e., garnishment of welfare benefits] and is therefore in conflict with it." A-4. Thus, the Supreme Court of Georgia held that OCGA § 18-4-22.1 was preempted by ERISA. Petitioners seek a writ of certiorari to review the judgment of the Georgia Supreme Court.

REASONS FOR GRANTING THE WRIT

1. **The case presents an important question concerning the extent to which the Employee Retirement Income Security Act preempts the states' rights to regulate their own enforcement procedures.**

Under Article VI, Clause 2 of the Constitution, the laws of the United States are the supreme laws of the land. The Supremacy Clause prohibits the states from enacting legislation inconsistent with federal law and also prohibits them from enacting any law in a particular area if Congress has intended to preempt state regulation. *Napier* v. *Atlantic Coastline Railroad Co.*, 272 U.S. 605 (1926). Because problems of preemption by definition involve conflicts between federal and state authority, they are particularly appropriate for resolution by this Court. *Local 926, International Union of Operating Engineers* v. *Jones*, 460 U.S. 669 (1983); *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979); *Chicago and Northwestern Transportation Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311 (1981). Moreover, where, as in the present case, the highest court of a state has ruled that a state statute is preempted, review by this Court is necessary to ensure that Congress indeed intended to displace state law. *See, Rice* v. *Norman Williams Co.*, 458 U.S. 654 (1982). The state's legislature is powerless to overturn the state court's determination that the statute is preempted. Since the state court's ruling is beyond review by the legislature, there is a danger that the legislature's will on a matter of state policy will be frustrated.

In the labor and employment area in particular, this Court is frequently called upon to decide questions of federal preemption of state law. *Sears, Roebuck & Co.* v. *United Brotherhood of*

Carpenters, 436 U.S. 180 (1978); *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959). Questions as to the preemptive effect of the Employee Retirement Income Security Act have recently occupied the attention of the Court. *Shaw* v. *Delta Air Lines*, 463 U.S. 85 (1983); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

While preemption may be either express or implied, *Fidelity Federal Savings & Loan Association* v. *De la Cuesta*, 458 U.S. 141 (1982), the ERISA preemption cases in this Court have focused on ERISA's express preemption provision. *Shaw* v. *Delta Air Lines*, 463 U.S. 85, 96 (1983). Although § 514, the ERISA preemption provision, is broad, the Court has recognized that it is does contain some limitations. *Metropolitan Life Insurance Co.* v. *Massachusetts*, 85 L.Ed. 2d 728 (1985).

This case presents the question of whether ERISA preempts the states from regulating their own procedures for the enforcement of money judgments. Section 206(d)(1) of ERISA requires that "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. 1056(d)(1). This prohibition against alienation of benefits applies to involuntary alienation such as execution or garnishment. *Tenneco, Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983). § 201(1) of ERISA, 29 U.S.C. § 1051(1), excludes employee welfare benefit plans from the coverage of Part 2 of ERISA dealing with participation and vesting. Thus, ERISA expressly excludes welfare plans from the protection against alienation of pension benefits contained in § 206(d)(1). In view of ERISA's specific prohibition against alienation of pension benefits and its express provision superceding state law, the question is presented as to whether ERISA preempts the states from exempting welfare benefits from the states' execution and garnishment procedures.

The enforcement of money judgments by creditors has traditionally been a matter of vital state concern, particularly as to judgments obtained in the state's own courts. *Brown* v. *Liberty Loan Corp.*, 539 F.2d 1355, 1363 (5th Cir. 1976), *cert. denied*,

430 U.S. 949 (1977). Indeed, even as to the enforcement of federal court money judgments, the federal practice is to refer to state law. Rule 69 of the Federal Rules of Civil Procedure provides that "The procedure on execution . . . shall be in accordance with the practice and procedure of the state in which the district court is held. . . ." Fed. R. Civ. P. Rule 69. In view of the primacy of state procedure in the area of execution of judgments, it was a significant departure from traditional principles of law for the Supreme Court of Georgia to rule that ERISA preempted the state from exempting welfare benefits from garnishment. The question of whether ERISA preempts the states from regulating their own enforcement procedures, as those procedures may be applied to welfare plans, is an important one which is worthy of consideration by this Court.

2. **This Court should resolve the conflict between the highest courts of Georgia and Missouri as to whether ERISA preempts the states from exempting welfare benefits from garnishment.**

The Georgia court's ruling that ERISA preempts the states from exempting welfare benefits from garnishment is in conflict with the decision of the Supreme Court of Missouri in *IBEW Local 1 Credit Union* v. *IBEW Holiday Trust Fund*, 583 S.W.2d 154 (St.Ct. Mo. 1979). Although Missouri has not enacted an anti-garnishment statute referring specifically to welfare benefits, the state recognizes spendthrift provisions which protect trust beneficiaries from involuntary alienation, including state garnishment procedures. In *IBEW*, an employer and a union included a spendthrift provision in a holiday trust fund agreement. Thus, the trust agreement provided that holiday benefits could not be reached by creditors of the employees. In an action by a creditor seeking to obtain garnishment, the Supreme Court of Missouri held that the spendthrift provision was not preempted by ERISA, although the court invalidated the spendthrift provision on other grounds.

Rule 17.1(b) of the Rules of this Court provides that when a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort, it is

a reason indicating that a petition for certiorari should be granted. In view of the conflict between the highest courts of Georgia and Missouri, this Court should grant certiorari to resolve the important question of whether states may exempt welfare benefits from garnishment.

CONCLUSION

For the foregoing reasons, petitioners pray that a writ of certiorari issue to review the judgment and decision of the Supreme Court of Georgia in this case.

Dated: February 17, 1987

Respectfully submitted,

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

Farrington & Abbot, P.C.
Post Office Box 9378
Savannah, Georgia 31412

Attorneys for Petitioners

Of Counsel:
CHARLES R. GOLDBURG

Appendix A

IN THE SUPREME COURT OF GEORGIA

Decided, December 2, 1986

43435. LANIER COLLECTION AGENCY & SERVICE, INC. v. MACKEY.

43466. MOR-WOOD, INC. v. SAVANNAH BANK AND TRUST COMPANY.

HUNT, Justice.

We granted certiorari in two cases to consider the issue of federal preemption of a state garnishment law by the Employee Retirement Act of 1974 (ERISA). In the unreported case of *Mor-wood* v. *Savannah Bank & Trust Co.*, (Case No. 71977, decided April 7, 1986), the Court of Appeals held that an Individual Retirement Account (IRA) was not subject to garnishment under either ERISA, 29 USCA § 1001 et seq., or the Georgia law, OCGA § 18-4-22.1, while in *Mackey* v. *Lanier Collection Agency & Services, Inc.*, 178 Ga. App. 467 (343 SE2d 492) (1986), it held that a longshoremen's employee vacation and holiday fund, although garnishable under ERISA, was not so under Georgia law. Both garnishors appeal.

OCGA § 18-4-22.1 provides: "Funds or benefits of a *pension, retirement, or employee benefit plan or program* subject to the provisions of the Federal Employees Retirement Act of 1974, as amended, shall not be subject to the process of garnishment (1) until such funds or benefits are currently due and payable or transferable to a member of such plan or program or to a beneficiary thereof and (2) unless such garnishment is based upon a judgment for alimony or child support, in which event such funds or benefits shall then be subject to the process of garnishment to the extent provided in subsection (d) of Code Section 18-4-20." (Emphasis supplied.) Thus, our state statute clearly exempts all

ERISA funds and benefits from garnishment except for alimony or child support judgments.

Under ERISA provisions, "employee *pension* benefit plans"—i.e., those providing income deferral or retirement income, 29 USCA § 1002 (2) (A)—are specifically protected from garnishment except for alimony and child support. 29 USCA § 1056 (d). However, "employee *welfare* benefit plans"—i.e., those providing medical; sickness, accident and disability; death or unemployment; vacation training, day care, scholarship, or prepaid legal services benefits, 29 USCA § 1002 (1)—are not protected. 29 USCA § 1051 (1).

1. As pointed out by the Court of Appeals in *Mor-wood*, supra, both federal and state law protect a retirement plan from garnishment except for alimony and child support. *Mor-wood* seeks to reach funds in an IRA and urges us to distinguish between the corpus and the benefits in making the corpus reachable by garnishment. Both the federal and state law clearly protect these funds as well as the benefits. *Citizens Bank of Ashburn* v. *Shingler*, 173 Ga. App. 511 (326 SE2d 861) (1985). See *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (68 LE2d 402, 101 SC 1895) (1981). Therefore, the Court of Appeals correctly affirmed the judgment of the trial court disallowing garnishment in Case No. 43466.

2. Case No. 43435, however, presents a more difficult proposition. Here Lanier seeks to reach its debtor's interest in a longshoremen's vacation and holiday fund, of which Mackey is the trustee. While this fund is subject to garnishment under ERISA, it is nevertheless protected by the Georgia statute.

On its face, OCGA § 18-4-22.1, quoted above, makes no distinction between types of benefit plans. It unambiguously states that "funds or benefits of a pension, retirement or employee benefit plan or program" under ERISA shall not be subject to garnishment.[1] Therefore, we must conclude that OCGA § 18-4-22.1 purports to protect such funds from garnishment (except as provided otherwise in the statute).

1. "[E]mployee benefit plan" means both employee welfare or pension plan under ERISA. 29 USCA § 1102 (3).

3. The issue then, as Lanier argues strenuously, is whether this Georgia statute is preempted by the provisions of ERISA. Indeed, 29 USCA § 1144 (a) provides that "the provisions of this subchapter [protection of employee benefit rights] ... shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan ..." covered by ERISA. (Emphasis supplied.)

In *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (77 LE2d 490, 103 SC 2890) (1983), a unanimous United States Supreme Court studied the matter of the extent of federal preemption under this Code section. Under review were New York laws forbidding discrimination against workers unable to work due to pregnancy rather than sickness.[2] Pointing out that Congress's purpose in enacting ERISA was to establish comprehensive standards for participation and vesting and uniform rules for responsibility for and obligation of the fiduciaries of employee benefit plans, 29 USCA § 1001 (b); *Shaw* v. *Delta Air Lines, Inc.*, supra at 92, the Court held that ERISA's preemptive statute was intended to be broad in scope, that New York's antidiscrimination laws "relate[d] to any employee benefit plan" within the meaning of the preemptive language, and that, unless one of the exceptions applied, such state laws were preempted.[3] Thus *Shaw* teaches that a "law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." [Footnote deleted.] Id. at 98. Clearly then, OCGA

2. Under scrutiny were a section of New York's Human Rights Law, prohibiting among other things employment discrimination on the basis of sex, and part of the state's Disability Benefits Law, requiring employers to pay sick leave benefits to employees unable to work due to pregnancy.

3. The Court then went on to consider whether these laws were exempted from preemption under further provisions of that section. It found that one, the Disability Benefits Plan, was specifically exempted under 29 USCA § 1003 (b) (3), as a "plan ... maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability laws." The other, the Human Rights Law, was not preempted only insofar as its provisions furthered Title VII because federal laws are exempted from preemption under 29 USCA § 1144 (d). But there would be no impairment of Title VII if state laws not covered by Title VII were preempted.

§ 18-4-22.1 "relates to" ERISA since it purports to regulate garnishment of ERISA funds and benefits, a matter specifically provided for under ERISA.[4]

We are not persuaded to the contrary by the argument that the Georgia act is broader than ERISA in protecting benefit plans and for that reason is not preempted. It prohibits that which the federal statute permits and is therefore in conflict with it. See *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (101 SC 1895, 68 LE2d 402) (1981), holding that a New Jersey law prohibiting a method of computing pension benefits permitted by ERISA was preempted.

Therefore, we must conclude that the Georgia statute is preempted by federal law unless that same law provides an exception.[5]

The only exemptions to preemption of state laws are for criminal conduct, 29 USCA § 1144 (b)(4), state tax laws, 29 USCA § 1144 (b)(5)(B)(i), and certain domestic relations orders, 29

4. We are not unmindful of the Supreme Court's footnote in *Shaw*, supra, that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan," but find that this is not one of those instances because the state law here is directly contrary to an ERISA provision. For an example where state policy (there, the trust pursuit rule) was held to have only a peripheral effect on ERISA policies and no preemption was found, see *Goben* v. *Barry*, 237 Kan. 822 (703 P2d 1378) (1985).

5. In holding that our garnishment law was not preempted, the Court of Appeals relied on the United States Supreme Court's analysis of the exceptions to the preemption provision in *Shaw* v. *Delta Air Lines, Inc.*, supra. See footnote 3 supra. Seizing upon the Supreme Court's holding at the conclusion of *Shaw*, the Court of Appeals adopted the following quotation: "New York's Human Rights Law is preempted with respect to ERISA benefit plans only insofar as it prohibits practices *that are lawful under federal law*." [Emphasis supplied.] This reliance is misplaced. The Court's conclusion there referred to ERISA's exemption from preemption for federal laws and the interplay between state and federal enforcement of Title VII, and is not applicable here. Our state garnishment law does not fall into the federal exemption of 29 USCA § 1144 (d). Even if this statement was relevant, clearly it can be said that the Georgia statute prohibits garnishment of vacation funds which is lawful under federal law.

USCA § 1144 (b)(7).[6] Such a broad preemption of state laws, as noted by the Supreme Court, reflects Congress's intention that regulation of these plans be uniform throughout the country.[7] Other courts have held accordingly. E.g., *Commercial Mortgage Ins., Inc.* v. *Citizens National Bank of Dallas*, 526 FSupp 510 (Tex. 1981); *First National Bank of Commerce* v. *Latiker*, 432 So2d 293, 296 (La. 1983). But see *Electrical Workers Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 SW2d 154 (Mo. 1979).

Therefore, given the broad interpretation of 29 USCA § 1144 (a) by the United States Supreme Court in *Shaw* v. *Delta Air Lines, Inc.*, supra, and finding no exception to preemption within its provisions, we must conclude that OCGA § 18-4-22.1 insofar as it conflicts with ERISA is preempted by federal law. The Court of Appeals erred in holding that the longshoremen's holiday and vacation fund was not subject to garnishment.

Judgment in Case No. 43466 affirmed; in Case No. 43435 reversed. All the Justices concur.

6. "It would have been unnecessary to exempt generally applicable state criminal statutes from preemption in [29 USCA § 1144] (b), for example, if [29 USCA § 1144] (a) applied only to state laws dealing specifically with ERISA plans." *Shaw* v. *Delta Air Lines, Inc.*, supra 463 U.S. at 99.

7. While it may be argued that preemption of state garnishment laws was not necessary to this goal, the fact remains that Congress clearly intended to sweep with a wide broom.

Appendix B

IN THE COURT OF APPEALS OF GEORGIA

71125. MACKEY v. LANIER COLLECTION AGENCY & SERVICE, INC.

BENHAM, Judge.

Appellant is the trustee of the South Atlantic ILA/Employee Vacation & Holiday Fund ("Fund") against which appellee, Lanier Collection Agency & Service, Inc. ("Lanier") instituted garnishment proceedings in the State Court of Chatham County. The Fund, established pursuant to a collective bargaining agreement, provides vacation and holiday benefits to longshoremen and others who work at several southeastern ports. After money judgments were obtained against some of the Fund's individual beneficiaries, appellee sought to garnishee their Fund benefits.

Appellant/garnishee answered complaints in the garnishment, claiming that since the judgments were not for alimony or child support, the Fund was exempt pursuant to OCGA § 18-4-22.1. Appellee traversed the answers, and a hearing was held. The trial court determined that "the legislative history of the Georgia statute evinces an intention to make the Georgia law identical to the federal law" (29 USCA § 1056 (d)(1)) which prohibits garnishment of pension plan funds but not of vacation plan funds, and ruled in favor of Lanier. We granted appellant's application for discretionary appeal to resolve the controversy.

Appellant enumerates as error the trial court's holding that OCGA § 18-4-22.1 does not exempt from garnishment vacation benefit plan funds that are subject to the federal Employee Retirement Income Security Act of 1974 ("ERISA") (29 USCA § 1001 et seq.) Appellant further cites as error the trial court's reliance on the preamble to OCGA § 18-4-22.1 to ascertain the legislature's intent; he argues that since the language of the statute itself is clear and unambiguous, resort to the preamble was unnecessary. Appellee disagrees and also contends that if the

Fund is subject to ERISA and if OCGA § 18-4-22.1 is interpreted to exempt the Fund, the statute is nullified by ERISA's preemption provision, 29 USCA § 1144 (a). We preface our resolution of these issues with an examination of some of ERISA's purposes.

1. ERISA is a comprehensive statute designed to set standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans and to promote the interests of employees and their beneficiaries in those plans. 29 USCA § 1001 (b); *Shaw* v. *Delta Airlines*, 463 U.S. 85 (103 SC 2890, 77 LE2d 490, 497) (1983). ERISA defines an "employee pension benefit plan" as one that provides income deferral or retirement income, and an "employee welfare benefit plan" as any program that provides benefits for contingencies such as sickness, accident disability, death, unemployment, or vacation benefits. 29 USCA § 1002 (1); (2) (A). In *Franchise Tax Board &c.* v. *Const. Laborers Vacation Trust &c.*, 463 U.S. 1 (103 SC 2841, 77 LE2d 420) (1983), the Supreme Court, although declining jurisidiction over the issue whether a vacation trust was subject to a tax levy the State of California attempted to impose against individual delinquent taxpayer/trust beneficiaries, held that the trust was "unquestionably an 'employee welfare benefit plan' within the meaning of § 3 ERISA [29 USCA § 1002 (1)] . . . and its individual trustees are thereby subject to extensive regulation under Titles I and III of ERISA." 77 LE2d at 428. Since it appears that the Fund is of a nature and purpose similar to that which was the subject of dispute in the *Franchise Tax Board* case, we conclude that the Fund is an "employee benefit plan" within the ERISA definition and is thus subject to ERISA's provisions.

Under ERISA, pension plans are specifically protected from involuntary transfers including garnishment except for alimony and child support. 29 USCA § 1056 (d). Welfare benefit plans are omitted from that protection by 29 USCA § 1051 (1). On the other hand, the Georgia statute in question reads: "Funds or benefits of a pension, retirement or employee benefit plan or program subject to the provisions of the federal [ERISA] of

1974, as amended, shall not be subject to the process of garnishment . . . unless such garnishment is based upon a judgment for alimony or for child support . . ." OCGA § 18-4-22.1. Therefore, the question we must answer is: Does this language clearly and unambiguously indicate that the Georgia legislature intended to protect vacation plans like the Fund from garnishment even though ERISA does not provide such protection? We conclude that the answer is "yes."

"The cardinal rule of statutory construction is to ascertain the intent of the legislature. It is equally fundamental that it is our duty to look first to the language of the statute and if the legislative intent is plain and expressed unambiguously, there is no interpretation required before the court executes its sworn duty to enforce the statute . . . Where language, rules of construction, and logic coincide the answer is apparent and simple." *Atlanta Cas. Co.* v. *Flewellen*, 164 Ga. App. 885, 887 (300 SE2d 166) (1982), modified, 250 Ga. 709 (300 SE2d 673) (1983). Applying these standards, it is clear that the legislature intended the statute to mean what is says, i.e., that ERISA-qualified employee benefit plans are exempt from garnishment except for alimony and child support, thus granting a broader protection to vacation funds than does ERISA. If the legislature intended to make the statute section "identical to the federal law" (as the trial court concluded after referring the Georgia House Journal, Vol. II, 2758 (1981)), it could have done so by adopting the federal language or by otherwise making a statement to that effect in the body of the statute. There being no ambiguity in the statute's wording, the trial court erred in resorting to the preamble of the Act to determine legislative intent. Compare *Taylor* v. *Mateer & Co.*, 117 Ga. App. 565, 567 (161 SE2d 394) (1968).

2. Having determined that our state lawmakers sought to broaden the federal protection against garnishment, we must answer the question whether such action is preempted by ERISA. We conclude that the state statute is not so preempted.

The ERISA preemption provision, 29 USCA 1144 (a), states that "the provisions of this subchapter and subchapter III of this

chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in § 1003 (a) of this title and not exempt under Section 1003 (b) of this title." The U.S. Supreme Court has interpreted the provision as being intended to cover not only state laws that are specifically designed to affect employee benefit plans, but also to eliminate the threat of conflicting or inconsistent state and local regulation of employee benefit plans, and to minimize interference with the administration of such plans. *Shaw* v. *Delta Airlines*, supra, 77 LE2d at 502; 506, fn. 25. The *Shaw* court went on to rule that "New York's Human Rights Law is preempted with respect to ERISA benefit plans *only insofar as it prohibits practices that are lawful under federal law.*" Id. at 508. (Emphasis supplied.) Under the *Shaw* analysis, OCGA § 18-4-22.1 would not be preempted since it does not prohibit practices that are lawful under federal law. Compare *Citizens Bank of Ashburn* v. *Shingler*, 173 Ga. App. 511 (326 SE2d 861) (1985).

The Supreme Court also recognized in *Shaw* that "[s]ome state actions may affect employee benefit plans in too tenuous, remote or peripheral a manner to warrant a finding that the law 'relates to' the plan. Cf. *American Telephone & Telegraph Co.* v. *Merry*, 592 F2d 118, 121 (CA2 1979) (state garnishment of a spouse's pension income to enforce alimony and support orders is not pre-empted)." *Shaw* v. *Delta Airlines*, supra at 503, fn. 21. The subject matter of the Georgia statute section in question (i.e., garnishment) does not "relate to" ERISA itself; its regulatory effect is too minimal and therefore insufficient to invoke ERISA's preemption provision. *Local Union 212 IBEW &c.* v. *Local 212 IBEW Credit Union*, 549 FSupp. 1299, 1302 (S.D. Ohio) (1982), affd. 735 F2d 1010 (6th Cir. 1984). "The enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA with respect to welfare plans. We decline to interpret ERISA to require preemption of [Georgia] laws in this area, 'in the absence of any legislative declaration that Congress intended to create an enormous regulatory vacuum in areas that traditionally have

been matters of vital state concern.' [Cit.]" *Electrical Workers &c. Credit Union* v. *IBEW-NECA &c. Trust Fund*, 583 SW2d 154, 159 (S.Ct. Mo.) (1979).

For the reasons discussed above, we conclude that the trial court erred in determining that the Fund is subject to garnishment. See *Goddard* v. *Boozer*, 160 Ga. App. 303, 305 (287 SE2d 308) (1981).

Judgment reversed. Banke, C.J., and McMurray, P.J., concur.

Appendix C

IN THE STATE COURT OF CHATHAM COUNTY
STATE OF GEORGIA

Judgment No. 81-389
Garnishment No. 84-4100

LANIER COLLECTION AGENCY AND SERVICE,
Plaintiff

vs.

LOUIS HAMMETT,
Defendant,

JOHN H. MACKEY,
Garnishee

Judgment No. 81-5082
Garnishment No. 84-4101

LANIER COLLECTION AGENCY,
Plaintiff

vs.

ROOSEVELT EADY,
Defendant

JOHN H. MACKEY,
Garnishee

Judgment No. 81-5148
Garnishment No. 84-4102

LANIER COLLECTION AGENCY,

Plaintiff

vs.

EDWARD WRIGHT, JR.,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 81-6391
Garnishment No. 84-4103

LANIER COLLECTION AGENCY,

Plaintiff

vs.

JOHN H. LEWIS,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 82-1578
Garnishment No. 84-4101

LANIER COLLECTION AGENCY,

Plaintiff

vs.

ALLEN MILTON A/K/A/ WELLEDEAN

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 82-1585
Garnishment No. 84-4105

LANIER COLLECTION AGENCY,

Plaintiff

vs.

JOHN POLITE,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 82-4893
Garnishment No. 84-4106

CITY OF SAVANNAH,

Plaintiff

vs.

OSCAR WILLIE ROBINSON,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 83-3855
Garnishment No. 84-4107

LANIER COLLECTION AGENCY,

Plaintiff

vs.

MELVIN CUTTER,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 80-3860
Garnishment No. 84-4108

LANIER COLLECTION AGENCY,

Plaintiff

vs.

CASH SANDERS,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 79-4231
Garnishment No. 84-4109

LANIER COLLECTION AGENCY,

Plaintiff

vs.

MARIAN S. MCPHERSON,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 84-3470
Garnishment No. 84-4110

LANIER COLLECTION AGENCY,

Plaintiff

vs.

LEROY SIMPSON,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 84-2164
Garnishment No. 84-4111

LANIER COLLECTION AGENCY,

Plaintiff

vs.

CLIFFORD KEMP,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 83-5049
Garnishment No. 4112

LANIER COLLECTION AGENCY,

Plaintiff

vs.

CHARLES STEVENS,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 80-383
Garnishment No. 4113

LANIER COLLECTION AGENCY,

Plaintiff

vs.

ROBBIE SIBERT,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 79-6325
Garnishment No. 84-4114

LANIER COLLECTION AGENCY,

Plaintiff

vs.

PORTER J. HILTON,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 78-2299
Garnishment No. 84-4116

LANIER COLLECTION AGENCY,

Plaintiff

vs.

JOHNNY L. KINLAW A/K/A/ KANLOW,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 83-1213
Garnishment No. 84-4189

ALLIED COLLECTION TECHNICIANS,

Plaintiff

vs.

JOHN TERRY LEGGETT,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 83-4238
Garnishment No. 84-4190

ALLIED COLLECTION TECHNICIANS,

Plaintiff

vs.

MARION MATHIS,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 79-2239
Garnishment No. 84-4263

LANIER COLLECTION AGENCY,

Plaintiff

vs.

LEAVON B. SHUMAN,

Defendant

JOHN H. MACKEY,

Garnishee

Garnishment No. 84-4412

FINANCE ONE OF GEORGIA, INC.,

Plaintiff

vs.

REESE SAULTER,

Defendant

JOHN H. MACKEY,

Garnishee

Judgment No. 83-4620
Garnishment No. 84-4264

LANIER COLLECTION AGENCY,
Plaintiff

vs.

MARION T. MATHIS,
Defendant

JOHN H. MACKEY,
Garnishee

Judgment No. 81-3406
Garnishment No. 84-4265

LANIER COLLECTION AGENCY,
Plaintiff

vs.

THOMAS J. MCMILLAR,
Defendant

JOHN H. MACKEY,
Garnishee

Judgment No. 81-1228
Garnishment No. 84-4411

COMMERCIAL CREDIT CORPORATION,
Plaintiff

vs.

CHARLES LEE,
Defendant

JOHN H. MACKEY,
Garnishee

Judgment No. 83-4195
Garnishment No. 84-4413

ASSOCIATES FINANCIAL SERVICES,
Plaintiff

vs.

EZEKIEL BOATWRIGHT,
Defendant

JOHN H. MACKEY,
Garnishee

ORDER

A collection agency obtained judgments against twenty-three (23) longshoremen for various debts. The agency then filed garnishment actions against the South Atlantic Employee Vacation/Holiday Trust Fund. The Fund was established as a result of a contract negotiated between the longshoremen's union and the Savannah Maritime Association, the bargaining organization of the longshoremen's employers, the stevedoring companies. The garnishee filed answers denying that its funds were subject to garnishment and the collection agency filed a traverse. The Court makes the following rulings after a hearing and considering the record.

The Trust Fund makes two legal arguments. First, it argues that the Georgia garnishment statute exempts the fund from garnishment. O.C.G.A. Section 18-4-22.1. The federal decisions are in conflict, but the trend of the law seems to be that only pension funds and not vacation funds are exempt from garnishment under the *Employee Retirement Income Security Act of 1974*, 19 U.S.C.A. Section 1001; *Local Union 212, International Brotherhood of Electrical Workers Vacation Trust Fund, et al.*, v. *Local 212 IBEW Credit Union*, 549 F. Supp. 1299 (1982). *Contra, Franchise Tax Board of the State of California* v. *Construction Laborers Vacation Trust for Southern California*, 679

F.2d 1307 (1982) (*vacated for lack of jurisdiction,* 77 L.Ed.2d 420 (1983)). The garnishee argues that the Georgia exemption is broader than the federal exemption. *Compare* O.C.G.A. Section 18-4-22.1 *with* U.S.C.A. Section 1056(d)(1).

However, the legislative history of the Georgia statute evinces an intention to make the Georgia law identical to the federal law. When the bill introduced in the Georgia House of Representations, its preamble recited that its purpose was "to amend the code chapter . . . relating to property and persons subject to garnishment, so as to provide at what time and to what extent funds or benefits of certain pension, retirement or employee benefit plans of programs may be subject to the process of garnishment; and for other purposes." *Georgia House Journal,* Vol. II, 2758 (1981). Later, however, the House voted unanimously to adopt instead the Senate version of the bill. The Senate Bill was identical except for the purpose. Its purpose was "to provide exemptions from garnishments for certain employee benefit plans subject to the Federal Employee Retirement Income Security Act of 1974 as amended, *so that the state law conforms to federal requirements for those plans* (emphasis added)." *Georgia House Journal,* Vol. II, 2758 (1981). It appears that the intent of the legislature was to bring the state law in line with the federal law. The intent of the legislature controls. Therefore, the Georgia statute does not exempt the South Atlantic Vacation and Holiday Fund from being garnished.

The trust's second objection to garnishment concerns the situs of the trust. They argue that the fund is administered exclusively in Jacksonville, Florida, and does no business within the State of Georgia. They argue that according to *Schmidlapp* v. *LaConfiance Insurance Co.,* 71 Ga. 246 (1883), the fund is not subject to jurisdiction in Georgia.

The *Schmidlapp* decision is not apposite in this case. In *Schmidlapp* the company's agent only lived in Georgia. He audited and approved claims in South Carolina and Florida, none in Georgia, and he gave checks for amounts due on account thereof. In the case *sub judice* one of the fund's twelve (12)

trustees resides in Georgia. Also living in Georgia are numerous employees who are beneficiaries of the trust fund. These employees are determined to be qualified members of the fund yearly and their entitlement is determined yearly. Furthermore the trust agreement establishing the fund was made in Savannah. (See trust agreement page 1). A noteworthy point is that there was no objection by the trust to service of process as served on John Mackey. The Garnishees appeared so any objection to service is deemed to be waived. *Weddington* v. *Kumar,* 149 Ga. App. 857, 256 S.E.2d 141 (1979).

Therefore, the Court rules for the plaintiff and hereby orders the garnishee to pay into the Court the amounts owed to plaintiff by each defendant. The total obligation of the garnishee in each case is, of course, limited to the maximum payment to which each defendant became entitled from the fund between the service date and the reply date of the summons of garnishment.

SO ORDERED THIS 20 DAY OF MARCH, 1985.

CHARLES B. MIKELL, JR., Judge
State Court of Chatham County

OPPOSITION

BRIEF

No. 86-1387

In The

Supreme Court of the United States

October Term, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES McINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

CARL S. PEDIGO, JR.
Post Office Box 9450
Savannah, Georgia 31412
(912) 236-2000
Counsel of Record for Respondent

DAVID H. JOHNSON
Post Office Box 9450
Savannah, Georgia 31412
Attorney for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 228-8843 (tone) 75
or call collect (402) 342-2831

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 86-1387

—o—

In The

Supreme Court of the United States

October Term, 1986

—o—

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES McINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

—o—

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

—o—

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

—o—

STATEMENT OF THE CASE

In lieu of a complete statement of the case, Respondent submits the following corrections of inaccuracies and omissions in the Statement of the Case contained in the Petition for a Writ of Certiorari (hereinafter "Petition"):

The summary by the Petitioners of Respondent's argument in the courts below is inaccurate in that it omits one

of the crucial statutory bases for that argument: the specific exclusion of welfare benefit plans from the coverage of ERISA's anti-alienation provision. This summary by Petitioners appears in footnote 5 on page 5 of the Petition. More accurately and completely, Respondent argued below that a specific statutory exemption from garnishment of welfare benefit plans is preempted by ERISA, which explicitly excludes such plans from the protection from garnishment it provides to pension plans, and which expressly preempts state laws which relate to such plans. ERISA §§ 201(1), 206(d)(1), and 514(a); 29 U.S.C. §§ 1051 (1), 1056(d)(1), and 1144(a).

Also, Petitioners are incorrect in stating that the Georgia Supreme Court "relied upon" this Court's statement in *Shaw v. Delta Air Lines,* 463 U.S. 85, at 91, 103 S.Ct. 2890, 77 L.Ed. 2d 490 (1983), to the effect that the state law considered therein was preempted to the extent that it prohibited practices lawful under federal law. Petition, 6. In fact, the Georgia Supreme Court criticized the Georgia Court of Appeals for relying on that very statement, saying that it "is not applicable here." Petition, A-4n; *Lanier Collection Agency and Service, Inc. v. Mackey,* 256 Ga. 499, 350 S.E.2d 439 (1986), fn. 5. The Georgia Supreme Court decision was reached independently of the cited language from *Shaw.*

———o———

SUMMARY OF ARGUMENT

Petitioners argue that a Georgia statute, O.C.G.A. § 18-4-22.1, which purports to prohibit garnishment of welfare benefit plans is not preempted by ERISA, which specifically excludes welfare benefit plans from its protection against garnishment, and which, by its terms, preempts state laws relating to such plans. Petitioners request that this Court grant certiorari because this case presents an important question of federal preemption and because resolution of conflicting decisions of the highest courts of Missouri and Georgia is necessary.

This petition does not present a question of sufficient importance to warrant this Court's review. First, the fact that this Court has previously considered issues of preemption by ERISA and limitations thereon militates against reconsideration rather than for it, since those decisions have settled the question raised here. Second, despite the importance of such enforcement procedures to the states, when applied to ERISA plans these procedures are also an important federal concern. In addition, preemption of the Georgia statute in question will not constitute an unwarranted invasion into Georgia's right to enforce money judgments; it will simply allow the enforcement procedures applicable to other assets to apply to welfare benefit funds. Finally, although the Petitioners frame their argument so as to imply that the "states" in general may be affected by this Court's disposition of this case, no effect outside the state of Georgia has been demonstrated.

Petitioners' contention that the Georgia Supreme Court decision is in conflict with that of the Supreme Court of

Missouri, thereby warranting review by this Court, is incorrect. The Missouri court simply ruled that the general garnishment laws of that state, applied to enforce a judgment through garnishment of a welfare benefit fund, do not conflict with ERISA and are not preempted thereby. The Georgia Court's holding that O.C.G.A. § 18-4-22.1 is preempted from exempting welfare benefit plans from garnishment does not conflict with this ruling.

ARGUMENT

1. The question presented by the Petitioners is not of sufficient importance to warrant review by this Court on certiorari.

The Petitioners cite several cases decided by this Court where federal preemption of state law was at issue, including cases addressing ERISA preemption. Petition, 7 and 8. These cases demonstrate a simple and undeniable proposition: some questions of federal preemption are important enough to require review by this Court. This certainly does not mean that *all* such questions are subjects for grants of certiorari. Rather the importance of each case must be judged by the specific issue raised therein.

Furthermore, the prior decisions of this Court regarding ERISA preemption indicate that the issue in the present case has been settled by this Court and is not a subject requiring further review. In *Shaw, supra,* at 96-97, this Court reasoned that a state law "relates to" an employee benefit plan, and is therefore preempted by ERISA pursuant to § 514(a), 29 U.S.C. § 1144(a), "if it has a connection

with or reference to such a plan." The *Shaw* decision conclusively establishes that O.C.G.A. § 18-4-22.1, the sole, express purpose of which is to exempt plans subject to ERISA from garnishment, is preempted. This issue was also settled in—and is controlled by—the decision in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 68 L.Ed. 2d 402, 101 S.Ct. 1895 (1981), which held preempted a state statute which attempted to prohibit a practice not specifically prohibited by ERISA, a situation analogous to Georgia's attempt to prohibit garnishment of welfare benefit plans, which are specifically excluded from ERISA's anti-alienation provision.

Petitioners cite *Metropolitan Life Insurance Co. v. Massachusetts,* 471 U.S. —, 85 L.Ed. 2d 728 (1985), as indicative of the importance of this case. Petition, 8. While it is true that this Court granted certiorari and recognized a limitation on ERISA preemption in *Metropolitan Life,* that limitation was one of the specific exceptions to preemption found in ERISA itself. The case has no relevance to the issue raised by Petitioners, which does not involve one of the statutory exceptions found in § 514(b)(2), 29 U.S.C. 1144(b)(2).

While it is also true, as Petitioners contend, that enforcement of money judgments is a valid area of state concern, such enforcement is also a federal concern when it relates to ERISA-covered benefit plans. Congress has prohibited the states from enforcing their garnishment laws against pension benefit plans, ERISA § 206(d)(1), 29 U.S.C. 1056(d)(1), and has expressly excluded welfare benefit plans from this prohibition. ERISA § 201(1), 29 U.S.C. 1051(1). Clearly, Congress considered the states'

enforcement of money judgments against pension and welfare benefit plans to be of sufficient federal concern to justify federal regulation.

Moreover, it should be kept in mind that the "regulation" of state enforcement procedures complained of by Petitioners simply allows state garnishment procedures to apply to welfare benefit plans, just as those procedures would apply to any other assets of a judgment debtor. The primary concern of the states in this area is their freedom to enforce and provide for collection of their judgments. See, e.g., *Electrical Workers Local No. 1 Credit Union v. IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154 (Mo. 1979). However, the states do not have any overriding concern in exempting federally regulated benefit plans from their garnishment laws. Georgia's interest in enforcement of its money judgments is not infringed upon by preemption of O.C.G.A. § 18-4-22.1; it is protected thereby.

Finally, Petitioners have failed to show that even this minimal federal regulation will have any effect in any state other than Georgia. Petitioners have cited no other state statute which attempts to exempt ERISA welfare benefit plans from that state's garnishment procedures. Nor is Respondent aware of any such statute other than Georgia's. Therefore, the importance of this case is limited to Georgia, whose highest court issued the decision in question.

2. No conflict exists between the Supreme Courts of Missouri and Georgia with regard to preemption of state garnishment law by ERISA.

The Petitioners contend that the Supreme Court of Missouri's decision in *Electrical Workers Local No. 1 Credit Union v. IBEW-NECA Holiday Trust Fund, supra*, conflicts with the decision of the Georgia Supreme Court in this case. No such conflict exists. The issue before the Georgia court was whether a state statute purporting to exempt welfare benefit plans from garnishment was preempted by ERISA. On the other hand, the Missouri court addressed a much different question: Are the basic Missouri statutes and public policy relating to garnishment preempted by ERISA when applied to a welfare benefit plan? *Id.*, at 157.

In answer to this question, the Missouri Supreme Court, recognizing that garnishment of welfare benefit plans does not conflict with ERISA since only pension benefit plans are protected thereby, held that Missouri's garnishment laws are not preempted by ERISA when a welfare benefit plan is garnished. This holding is in harmony with that of the Georgia Supreme Court to the effect that statutory exemption of welfare benefit plans from garnishment does conflict with ERISA and is therefore preempted. The decisions of these courts do not conflict with one another, and therefore do not constitute a special and important reason warranting the grant of review by this Court on writ of certiorari.

CONCLUSION

For all of the reasons stated above, Respondent requests that this Petition for a Writ of Certiorari be denied.

Respectfully submitted,

CARL S. PEDIGO, JR.
Post Office Box 9450
Savannah, Georgia 31412
(912) 236-2000
Counsel of Record
for Respondent

DAVID H. JOHNSON
Post Office Box 9450
Savannah, Georgia 31412
Attorney for Respondent

AMICUS CURIAE

BRIEF

No. 86-1387

In the Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, ET AL., PETITIONERS

v.

LANIER COLLECTION AGENCY & SERVICE, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

CHARLES FRIED
Solicitor General

DONALD B. AYER
Deputy Solicitor General

CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

GEORGE R. SALEM
Solicitor of Labor

ALLEN H. FELDMAN
Associate Solicitor

CAROL A. DE DEO
Deputy Associate Solicitor

BETTE J. BRIGGS
Attorney
Department of Labor
Washington, D.C. 20210

QUESTION PRESENTED

Whether Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a), preempts state laws insofar as they permit judgment creditors to garnish employee welfare benefit plans covered by ERISA to satisfy debts of some of the plan's participants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes, regulation and rule:

Statutes, regulations and rule—Continued: Page

Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1387

JOHN H. MACKEY, ET AL., PETITIONERS

v.

LANIER COLLECTION AGENCY & SERVICE, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. Petitioners are the trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund ("the Fund"), which provides vacation and holiday benefits to longshore workers and other employees of several southeastern stevedoring companies (Pet. App. A6, A19). The Fund is an employee welfare benefit plan as defined in Section 3(1) of the Em-

ployee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(1).[1] Employees' qualifications for participation in the Fund and their entitlement to benefits are determined annually (Pet. App. A21).

Respondent, Lanier Collection Agency & Service, Inc., obtained money judgments against 23 employee-beneficiaries of the Fund. Thereafter, respondent instituted garnishment proceedings in the State Court of Chatham County pursuant to Ga. Code Ann. § 18-4-60 (1982), seeking to garnish their Fund entitlements.[2] Petitioners maintained that the Fund was exempt from garnishment by Ga. Code Ann. § 18-4-22.1 (1982), which prohibits garnishment of ERISA plans except to enforce alimony or child support obligations.[3] It is undisputed that the judgments respondent seeks to enforce do not arise from such family obligations (Pet. App. A6).

[1] ERISA governs welfare benefit plans as well as pension benefit plans. Section 3(1) (emphasis added) defines "employee welfare benefit plan" to mean "any plan, fund, or program • • • established or maintained • • • for the purpose of providing for its participants or their beneficiaries • • • medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or *vacation benefits* • • •."

[2] Section 18-4-60 provides that "[i]n all cases where a money judgment shall have been obtained in a court of this state or in a federal court sitting in this state, the plaintiff shall be entitled to the process of garnishment." Under Georgia law garnishment proceedings are governed exclusively by state statute. See Ga. Code Ann. § 18-4-60 (1982); *Grande Carpet Co.* v. *Bedco Associates No. 1*, 171 Ga. App. 33, 318 S.E.2d 767 (1984); *Diversfield Mortgage Investors* v. *Georgia-Carolina Industrial Park Venture*, 463 F. Supp. 538, 539 (N.D. Ga. 1978).

[3] Section 18-4-22.1 provides in pertinent part that "[f]unds or benefits of a pension, retirement, or employee benefit plan

2. The trial court held that the Fund is subject to garnishment (Pet. App. A11-A21). It concluded that the Georgia legislature intended the exemption in Section 18-4-22.1 "to make the Georgia law identical to the federal law" (Pet. App. A20). While the court acknowledged that "[t]he federal decisions are in conflict," it considered that "the trend of the law seems to be that only pension funds and not vacation funds are exempt from garnishment" under ERISA (*id.* at A19). Accordingly, the trial court held that the Georgia statute does not exempt the Fund from garnishment, and ordered petitioners to pay into the court amounts owed to respondent by the Fund's beneficiaries (*id.* at A21).

The Georgia Court of Appeals reversed (Pet. App. A6-A10). Although the court of appeals agreed with the trial court that ERISA does not protect the Fund from garnishment (*id.* at A7-A8), it concluded that the Georgia legislature intended Section 18-4-22.1 "to protect vacation plans like the Fund from garnishment even though ERISA does not provide such protection" (Pet. App. A8). The court of appeals therefore concluded that state law exempts the Fund from garnishment (*id.* at A9).

The court of appeals rejected respondent's argument that the express preemption provision of ERISA, Section 514(a), 29 U.S.C. 1144(a), prevented the state from exempting welfare benefit plans from state garnishment procedures. Section

or program subject to [ERISA] shall not be subject to the process of garnishment • • • (2) unless such garnishment is based upon a judgment for alimony or for child support • • •."

514(a) provides that ERISA "supersede[s] any and all State laws insofar as they * * * relate to any employee benefit plan." Relying on *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983), the court concluded that the exemption from garnishment in Section 18-4-22.1 is not preempted because it does not " 'relate to' ERISA" within the meaning of Section 514(a), since "its regulatory effect is too minimal and therefore insufficient to invoke ERISA's preemption provision" (Pet. App. A9). The court observed in that regard that " '[t]he enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA with respect to welfare plans.' " *Ibid.* (quoting *Electrical Workers Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154, 159 (Mo. 1979)).

The Supreme Court of Georgia reversed (Pet. App. A1-A5). It first agreed with the court of appeals that Section 18-4-22.1 "exempts all ERISA funds and benefits from garnishment except for alimony or child support judgments" (Pet. App. A1-A2). The court then noted that Section 206(d) of ERISA, 29 U.S.C. 1056(d), expressly prohibits alienation of *pension* benefits but does not apply to *welfare* plans (Pet. App. A2).[4] It concluded, therefore, that the statutory exemption from garnishment in Section 18-4-22.1 " 'relates to' ERISA since it purports to regulate garnishment of ERISA funds and benefits,

[4] Section 206(d)(1) requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Welfare plans are expressly excluded from coverage of the anti-alienation clause and other participation and vesting requirements by Section 201(1), 29 U.S.C. 1051(1).

a matter specifically provided for under ERISA" (Pet. App. A3-A4 (footnote omitted)). The Georgia Supreme Court reasoned that the Georgia statute, by protecting welfare funds from garnishment, "prohibits that which the federal statute permits and is therefore in conflict with it." Pet. App. A4, citing *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981). It thus held that Georgia's statutory exemption to garnishment "insofar as it conflicts with ERISA is preempted by federal law," and accordingly ruled that the Fund is subject to garnishment (Pet. App. A5).

DISCUSSION

The Georgia Supreme Court erred near the beginning of its analysis by holding that ERISA permits garnishment of welfare benefit plans such as the vacation benefit plan at issue here. In fact, ERISA's express preemption provision, Section 514(a), preempts any state law provisions insofar as they allow creditors to garnish welfare benefit plans, since such garnishment actions "relate to" ERISA plans within the meaning of Section 514(a). State garnishment proceedings affect employee benefit plans because plan trustees must participate in those proceedings, incurring potentially substantial costs, and disburse plan assets as required by state courts rather than according to the documents governing the plan. ERISA therefore generally precludes the application of state garnishment laws to ERISA plans. Because of the practical importance of the issue and disagreement among the lower courts addressing it, review is warranted by this Court to decide whether

ERISA preempts state garnishment laws insofar as they apply to welfare plans.[5]

1. a. As previously chronicled by this Court, Congress enacted ERISA following nearly a decade of studying the operation of private employee pension and welfare benefit plans. *Central States* v. *Central Transport, Inc.*, 472 U.S. 559, 569 & n.9 (1985); *Nachman Corp.* v. *PBGC*, 446 U.S. 359, 361 (1980). Congress found that there had been enormous growth in employee benefit plans in recent years and that "the continued well-being and security of millions of employees and their dependents are directly affected by these plans." 29 U.S.C. 1001(a). Due to the inadequacy of existing minimum standards under state law, however, Congress found that "the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered" (*ibid.*). Congress therefore established in ERISA a comprehensive regulatory framework to "assur[e] the equitable character of such plans and their financial

[5] The petition—following the Georgia Supreme Court's erroneous conclusion that ERISA permits (indeed, mandates) garnishment of welfare benefit plans—presents the question whether ERISA preempts the states from *exempting* employee welfare funds or benefits from the state's own garnishment procedures and does not explicitly ask whether the state's garnishment procedures are themselves preempted insofar as they apply to ERISA plans. Because the determination of the validity of the state garnishment procedures as applied to a welfare plan is a threshold issue which is essential to the analysis of the decision below and is a predicate to an intelligent resolution of the question presented, it is "fairly included" within the question set forth in the petition and, under Rule 21.1(a) of the Rules of this Court, may be considered by this Court. See *Cuyler* v. *Sullivan*, 446 U.S. 335, 342 n.6 (1980).

soundness" (*ibid.*), and thereby to "protect * * * participants in employee benefit plans and their beneficiaries." 29 U.S.C. 1001(b).

At the same time that it created ERISA's scheme of regulation of employee benefit plans, Congress expressly preempted "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan," and broadly defined "State law" to include "all laws, decisions, rules, regulations, or other State action having the effect of law." Section 514 (a) and (c), 29 U.S.C. 1144(a) and (c). As this Court has repeatedly instructed, Section 514(a) is "deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'" *Pilot Life Insurance Co.* v. *Dedeaux*, No. 85-1043 (Apr. 6, 1987), slip op. 4 (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 415 U.S. 504, 523 (1981)). "The preemption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985). Nor, as this Court has emphasized, is preemption "limited to 'state laws specifically designed to affect employee benefit plans.'" *Pilot Life*, slip op. 6 (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983)). Rather, the phrase "relate to" must be "given its broad common-sense meaning, such that a state law 'relate[s] to' a benefit plan 'in the normal sense of the phrase, if it has a connection with or reference to such a plan.'" *Pilot Life*, slip op. 6 (quoting *Metropolitan Life*, 471 U.S. at 739, quoting *Shaw*, 463 U.S. at 97).

As this Court explained in *Shaw*, 463 U.S. at 98-100, the legislative history of ERISA confirms that

Congress intended to occupy the field of employee benefit plans by superseding any and all state laws affecting such plans, and not just those state laws governing subjects covered by the federal statute. The Conference Committee deliberately rejected the approach employed in earlier House and Senate versions of the bill, which preempted only matters actually regulated by ERISA, in favor of the broad preemption of all state laws relating to plans covered by the statute. See H.R. Conf. Rep. 93-1280, 93d Cong., 2d Sess. 383 (1974). Describing the conferees' intent to the House of Representatives, Congressman Dent explained that "the provisions of Section 514 would reach any rule, regulation, practice, or decision of any State * * * which would *affect* any employee benefit plan covered by ERISA." 120 Cong. Rec. 29197 (1974) (emphasis added).

b. Like the employment discrimination law involved in *Shaw*, the Georgia garnishment statute, although also governing other matters, "relate[s] to" ERISA-covered plans insofar as it affects such plans. Most obviously, the state law authorizes judgment creditors to appropriate plan assets before they are disbursed as benefits to plan participants or beneficiaries. The Georgia garnishment procedures also affect employee benefit plans by imposing added duties on fund trustees. Here, to comply with the garnishment order, the trustees of the Fund would be required to confirm the identity of each of the 23 individual participants, calculate his or her maximum entitlement from the Fund for the period between the service date and the reply date of the summons of garnishment, determine the amount that each individual owes to respondent, and make payment into state court of the lesser of the amount

owed to respondent or the amount of the individual's entitlement. See Pet. App. A21. Moreover, because garnishment is essentially an adversary proceeding between the plaintiff and the garnishee (see generally 38 C.J.S. *Garnishment* § 2 (1943)), plans subject to garnishment necessarily bear costs in answering the summons of garnishment as well as costs incurred in any contest over, for example, the validity of the garnishment, the liability of the garnishee, or priorities between garnishments and other levies. And, as trustees of a multiemployer plan covering participants in several states, petitioners are potentially subject to multiple garnishment orders under varying or conflicting state laws.

These effects of the state garnishment procedures fall squarely within the preemptive sweep of Section 514(a). In *Shaw*, this Court acknowledged that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates' to the plan" (463 U.S. at 100 n.21). This case, however, like *Shaw*, "plainly does not present a borderline question" (*ibid.*) because garnishment of welfare benefit plan assets directly interferes with plan administration and threatens the imposition of substantial costs on plans. Rather, this case involves precisely the "sort of interference with the administration of employee benefit plans" that "ERISA's comprehensive preemption of state law was meant to minimize" (*id.* at 105 n.25). Accordingly, state garnishment laws are preempted by Section 514(a) insofar as they apply to such plans.

Moreover, garnishment of trust assets would directly conflict with Sections 403(c)(1) and 404(a)(1)(A) of ERISA, 29 U.S.C. 1103(c)(1) and 1104

(a)(1)(A), which require trustees to hold and expend trust funds "for the exclusive purposes of providing benefits" and "defraying reasonable expenses of administering the plan." Payment of plan monies to a creditor of a beneficiary violates these ERISA restrictions and could subject the trustees to personal liability for breach of fiduciary responsibility. See 29 U.S.C. 1109 and 1132. Congress preempted state laws under Section 514(a) precisely to free plans and their trustees from such conflicting legal duties.

The application of Georgia's garnishment procedures to welfare benefit plans also "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of ERISA. *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). Congress sought in ERISA to assure that employees and their beneficiaries actually receive promised fringe benefits. See 29 U.S.C. 1001(a); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. at 510 & n.5, citing *Nachman Corp.* v. *PBGC*, 446 U.S. at 375.[6] To permit

[6] Congress, in enacting ERISA, was particularly concerned with "the 'great personal tragedy' suffered by employees whose vested benefits are not paid when pension plans are terminated," *Nachman Corp.*, 446 U.S. at 374 (footnote omitted) (quoting from a statement by Senator Bentsen), and accordingly imposed greater requirements on pension plans than on welfare plans. See 29 U.S.C. (& Supp. III) 1051-1086 (participation, vesting, and funding provisions). But evidence before Congress also reflected abuse involving misuse and mismanagement of welfare benefit funds—see, *e.g.*, *Private Welfare and Pension Plan Legislation: Hearings on H.R. 1045, H.R. 1046, and H.R. 16462 Before the General Subcomm. on Labor of the House Comm. on Education and Labor*, 91st Cong., 1st & 2d Sess. 464, 470-472 (1970) (statement of George Shultz, Secretary of Labor)—and ERISA's fiduciary responsibilities and trust requirements apply equally to pension and welfare plans. See 29 U.S.C. (& Supp. III) 1101-1113.

general creditors to reach plan assets would frustrate congressional intent to ensure the financial soundness of plans and the payment of benefits to participants and their beneficiaries. In contrast, preemption of the Georgia garnishment procedures does not, in most instances, defeat the ability of creditors to collect judgment debts owed by the plan participants. It merely requires creditors to pursue debtors' other assets or to await the established and easily ascertainable periodic distribution by the plan of monies to the participants.

c. The Georgia Supreme Court concluded that, although ERISA preempts garnishment of pension plans, it permits garnishment of welfare plans. See Pet. App. A2. It based that conclusion on the fact that Section 206(d)(1) of ERISA, 29 U.S.C. 1056(d)(1), requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated,"[7] but contains no similar provision pertaining to welfare plans. See note 4, *supra*. The court erred in its negative implication that welfare plan benefits may be garnished. It is

[7] The identical provision in Section 401(a)(13) of the Internal Revenue Code of 1954 (26 U.S.C.) has been interpreted in a Treasury regulation to prohibit both voluntary assignments and garnishment by operation of law. 26 C.F.R. 1.401(a)-13(b)(1) (1954 Code). This interpretation is supported by the legislative history, and most courts have held that private creditors may not garnish pension benefits under Section 206(d)(1) of ERISA. See, *e.g.*, *Tenneco, Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983); *General Motors Corp.* v. *Buha*, 623 F.2d 455 (6th Cir. 1980); *Commercial Mortgage Ins., Inc.* v. *Citizens Nat'l Bank*, 526 F. Supp. 510 (N.D. Tex. 1981); *Helmsley-Spear Inc.* v. *Winter*, 74 A.D.2d 195, 426 N.Y.S.2d 778 (1980), aff'd, 52 N.Y.2d 984, 419 N.E.2d 1078, 438 N.Y.S.2d 79 (1981).

true that Section 206(d)(1), which prohibits any assignment, whether voluntary or involuntary, deals only with pension plan assets. But Section 514 preempts state laws relating to both pension and welfare plans. That provision effectively prohibits involuntary assignments of plan assets because such assignments would necessarily be effected by application of state laws which are preempted.[8] Thus, while garnishment of welfare plans is not prohibited by Section 206(d)(1), Section 514(a) bars garnishment of any employee benefit plan pursuant to state law. While there is some overlap between Section 206(d)(1) and Section 514(a)—both prohibit involuntary assignment of pension benefits—the Georgia Supreme Court read too much into Section 206(d)(1) in holding that it implicitly demonstrates that Congress intended to permit garnishment of welfare plan assets.

A subsequent congressional enactment conclusively shows that Congress understands Section 514(a) to preempt state garnishment laws. In 1984, Congress adopted Section 514(b)(7), which provides that Section 514(a) "shall not apply to qualified domestic relations orders (within the meaning of [29 U.S.C. 1056(d)(3)(B)(i)])." Pub. L. No. 98-397, § 104(b),

[8] Section 514(a) does not, however, bar voluntary assignments by plan participants since voluntary assignments do not rely on provisions of state law. See, *e.g.*, *Misic* v. *Building Service Employees Health and Welfare Trust*, 789 F.2d 1374, 1377 (9th Cir. 1986) (permitting assignment by a beneficiary of his right to reimbursement under a health care plan to the health care provider); see also 29 C.F.R. 2509.78-1 (interpreting ERISA to permit voluntary assignment of vacation plan benefits, provided the plan documents expressly permit a participant to make such an assignment and certain other conditions are met).

98 Stat. 1426, 29 U.S.C. (& Supp. III) 1144(b)(7). The 1984 amendment codified a line of cases in which the courts had found an implied exception to ERISA's preemption and pension anti-alienation provisions to permit garnishment of employee benefits to satisfy family support and community property obligations contained in state court orders.[9] The creation of a limited exemption for domestic relations orders reaffirms Congress's intent to otherwise bar garnishment of employee benefit plans. The exemption "preserves and clarifies the original broad preemption of State law under ERISA section 514 while carrying out an appropriate and well-defined exception for domestic relations orders meeting specific standards" (130 Cong. Rec. H8756 (daily ed. Aug. 9, 2984) (remarks of Rep. Erlenborn)).[10]

[9] *AT&T Co.* v. *Merry*, 592 F.2d 118 (2d Cir. 1979); *Operating Engineers' Local #428 Pension Trust Fund* v. *Zamborsky*, 650 F.2d 196 (9th Cir. 1981) (collecting cases); *Tenneco Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983); *Bowen* v. *Bowen*, 715 F.2d 559 (11th Cir. 1983) (per curiam); *Stone* v. *Stone*, 450 F. Supp. 919 (N.D. Cal. 1978), aff'd, 632 F.2d 740 (9th Cir. 1980), cert. denied, 453 U.S. 922 (1981); *In re the Marriage of Campa*, 89 Cal. App. 3d 113, 152 Cal. Rptr. 362 (1979), appeal dismissed, 444 U.S. 1028 (1980). In enacting Section 514(b)(7), Congress sought "to ensure that only those orders that are excepted from the spendthrift provisions are not preempted by ERISA." S. Rep. 98-575, 98th Cong., 2d Sess. 19 (1984).

[10] There is no basis for implying an exception from Section 514(a) to permit the garnishment of plan assets by a participant's general creditor. The courts that had recognized the implied exception codified by Section 514(b)(7) based that exception on the fact that "[m]embers of the families of employees are included in the class which ERISA protects," a factor which distinguishes the claims of dependents from

2. Further review of this case is warranted because of the confusion in the lower courts as to whether ERISA generally preempts state garnishment laws. In *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 679 F.2d 1307 (9th Cir. 1982), vacated, 463 U.S. 1 (1983), the court of appeals held in a split decision that ERISA preempted a California tax collection law insofar as it permitted state authorities to levy on funds held in trust for the taxpayers under a vacation benefit plan. The court of appeals reasoned—correctly, in our view—that while pension plans, but not welfare plans, are expressly protected from creditors' claims, ERISA's preemption clause governs both pension and welfare plans, and there is "[no] legal basis to warrant a retreat from preemption" (679 F.2d at 1309). Although this Court vacated the court of appeals' judgment for lack of jurisdiction, holding that the case had been improperly removed from state to federal court, it noted that "the Court of Appeals may well be correct that ERISA precludes enforcement of the State's levy in the circumstances of this case" (463 U.S. at 26).[11] See also *National Carriers' Conference Committee* v. *Heffernan*, 454 F. Supp. 914 (D. Conn. 1978) (Section 514(a) preempts a state statute re-

---

those of business or other creditors. *Stone*, 450 F. Supp. at 926. While Congress expressly declared in enacting ERISA that "the continued well-being and security of millions of employees *and their dependents* are directly affected by [the] plans" (§ 2(a), 29 U.S.C. 1001(a) (emphasis added)), it expressed no similar concern for creditors such as respondent.

[11] The case is currently pending on remand to the Superior Court of the State of California for the County of Los Angeles (No. C-326040).

quiring welfare plans to pay an annual tax); *General Motors Corp.* v. *California State Board of Equalization*, 600 F.Supp. 76 (C.D. Cal. 1984) (insurance franchise tax on uninsured welfare benefits preempted by ERISA).

Other courts have held to the contrary. The Sixth Circuit adopted the decision of a district court holding that absent "some express or implied provision of ERISA which addresses the matter," or some "'regulatory' effect" other than administrative expense, Section 514(a) does not preempt state garnishment proceedings against funds held in a vacation trust. *Local Union 212 IBEW Vacation Trust Fund* v. *Local 212 IBEW Credit Union*, 735 F.2d 1010 (6th Cir. 1984) (per curiam), aff'g 549 F. Supp. 1299, 1302 (S.D. Ohio 1982). To the same effect is a Missouri Supreme Court decision, *Electrical Workers Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154, 159 (1979) (en banc), declining to interpret Section 514(a) of ERISA to require preemption of that state's garnishment law since "[t]he enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA with respect to welfare plans." Accord *First National Bank of Commerce* v. *Latiker*, 432 So.2d 293, 296 (La. Ct. App. 1983).

The decisions allowing garnishment of welfare plans are inconsistent this Court's decisions in *Shaw*, *Metropolitan Life*, and *Pilot Life* regarding the breadth of Section 514. Moreover, as this Court recognized in *Franchise Tax Board*, 463 U.S. at 4, the issue is an important one and "must eventually receive a definitive, uniform resolution." Indeed, whether welfare plan assets are subject to garnish-

ment has practical implications for thousands of welfare plans covering millions of participants. Focusing only on multiemployer welfare plans (other than health and life insurance plans), the Department of Labor estimated in 1981, the last year for which statistics were tabulated, that there were over 2,000 such plans covering in excess of six million participants.[12]

This case well illustrates the confusion and disagreement among the lower courts on the issue of whether ERISA preempts the garnishment of welfare plan assets. Indeed, the strongest argument for denying review of this case is the profound confusion evident in the opinion of the Georgia Supreme Court. Its conclusion that ERISA *requires* states to subject welfare plan assets to existing state garnishment laws is the framework within which the question is presented by petitioner. As we have noted (see note 5, *supra*), however, implicit within the court's holding is the important issue on which the courts have disagreed—whether ERISA preempts the application of state garnishment laws to welfare plan assets. This Court should grant certiorari because uncertainty on this latter issue will interfere with the orderly administration of employee benefit plans, which is what ERISA's broad preemption provision sought to minimize. See *Shaw*, 463 U.S. at 105 n.25.

---

[12] These figures were tabulated from annual reports filed with the Department of Labor as required by 29 U.S.C. 1023-1024.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

CHARLES FRIED
Solicitor General

DONALD B. AYER
Deputy Solicitor General

CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General

GEORGE R. SALEM
Solicitor of Labor

ALLEN H. FELDMAN
Associate Solicitor

CAROL A. DE DEO
Deputy Associate Solicitor

BETTE J. BRIGGS
Attorney
Department of Labor

MAY 1987

☆ U. S. GOVERNMENT PRINTING OFFICE: 1987 181483 40369

JOINT

APPENDIX

No. 86-1387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOANE, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

JOINT APPENDIX

CHARLES R. GOLDBERG
THOMAS W. GLEASON*
26 Broadway, 17th Floor
New York, New York 10004
Telephone: (212) 425-3240
Counsel for Petitioners

DAVID H. JOHNSON
CARL S. PEDIGO, JR.*
Post Office Box 9450
Savannah, Georgia 31412
Telephone: (912) 236-2000
Counsel for Respondent

*Counsel of Record

PETITION FOR CERTIORARI FILED FEBRUARY 24, 1987
CERTIORARI GRANTED JUNE 22, 1987

TABLE OF CONTENTS

State Court of Chatham County, Georgia
docket entries

STATE COURT OF CHATHAM COUNTY

Garnishment No. 84-4100

Civil Action No. 81-389

LANIER COLLECTION AGENCY AND SERVICE, INC.

Plaintiff

VS.

LOUIS HAMMETT, et al.

(Defendants)

JOHN H. MACKEY, Trustee

Garnishee

PROCEEDINGS

Garnishment Filed November 2, 1984

Return of Service on Garnishee Filed November 6, 1984

Return of Service on Defendant Filed November 7, 1984

Answer of Garnishee Filed December 13, 1984

Answer of Garnishee Filed December 26, 1984

Traverse of Garnishment Answer Filed December 26, 1984

Traverse of Garnishment Answer Filed December 28, 1984

Order on Traverse Filed March 20, 1985

Order Consolidating Cases Filed April 5, 1985

State Court of Chatham County, Georgia
docket entries

Order Amending Order on Traverse Filed April 10, 1985

Petition to Allow an Appeal of an Adverse Decision of the State Court of Chatham County in a Garnishment Action Filed April 16, 1985

Response to a Petition to Allow an Appeal of an Adverse Decision of the State Court of Chatham County in a Garnishment Action Filed May 2, 1985

Remittitur on Application for Discretionary Appeal Filed May 15, 1985

Notice of Appeal Filed May 20, 1985

Court of Appeals of Georgia docket entries

125

GENERAL DOCKET — COURT OF APPEALS OF GEORGIA

Thomas W. Gleason & Charles R. Goldberg
~~To Broad St, N.Y, N.Y. 10004~~ 26 Broadway, New York, N.Y. 10004
1709
Fletcher Farrington & Louisa Abbot
Box 9378, Sav. 31412

Carl D. Pedigo, Jr.
~~Box 5145~~ 12
~~319 Bathnall St~~ Sav. 31401
John J. Sparkman, Jr
604 E. 72nd St. Sav. 31405
Ronald Crawford
7805 Waters Ave, Sav. 31404

Case No. V31,

John H. Mackey
APPELLANT

v.

Lanier Collection Agency and Service, Inc.
APPELLEE

Appl. 1218

Charles D. Tikall Jr
24-165

Order/Garnishment

181A778
84-1402
178A467
Chatham/State

Date: ~~FEB 18 1986~~ 2/13/87
Serial: ~~330~~ 224
Division: McMurray P.J. ✓
Banke C.J. & Benham J.
Concur

Judgment Reversed
Affirmed

Filings:
Record: 6/19/85
Transcript:
Enumeration of Errors 7/19/85
Briefs: 7/1/85 Info
For Appellant 7/19/85
9/4/85 Reply
2/7/86 on M.F.R.
For Appellee 7/29/85

Motions: and after
Motion for Rehearing: 7/25/86

ORDERS: 4/1/86 Rehearing denied
2/13/87 Judg. of 2/18/86 Vacated

Costs paid by: (13735)

TO CALENDAR FOR: SEP 10 1985 Recused
4/14/86 Cert to Supreme Court granted
Notice by Court 4/5/86
Sup. Ct. No 43435
Notice 4/24/86
Remittitur [illegible]
Remittitur to Clerk MAR 20 1987
Opinion to Clerk
7/10/85 Req: appt ~~Attorney~~ Abbott

Supreme Court of Georgia docket entries

435

GENERAL DOCKET — SUPREME COURT OF THE STATE OF GEORGIA

arl S. Pedigo, Jr., David H. Johnson
cCorkle, Pedigo & Hunter
. O. Box 9450
avannah 31412

Charles B. Mikell, Jr.

LANIER COLLECTION AGENCY & SERVICE, INC.

Petition for Certiorari
to Court of Appeals
(71125)

43435

v

harles R. Goldburg (Certify, in Case file) Inc 7/15/86
6 Broadway, 17th Floor
ew York New York 10004

~~5050~~
7-E

JOHN H. MACKEY

ouisa Abbot
arrington & Abbot
. O. Box 9378
avannah 31412

See 43466

State Court, Chatham Co.
Cert filed in U.S. Sup Ct. 2/24/87

Justice Hunt.

Number 470

Date: 12/2/86

Judgment: reversed.

Filings:
Enumeration of errors: Petition (8)
Notice of appeal: 4/21/86
Clerk's transcript: 4/21/86
Reporter's transcript:
Briefs:
For appellant:
For appellee: 4/30/86
Orders:
5/30/86 Consolidated with 43466.
5/30/86 Certiorari granted for Sept. 86.

To calendar for: 9/15/86
Submitted:
Argument request: Appellant ____ Appellee ____
Argument: For appellant Johnson
For appellee Goldberg
Free copy opinion to: Pedigo
12/2/86 and to: Goldburg, Abbot
Motions:
6/25/86 for leave to practice pro hac vice

450

500

Remittitur—Opinion—to clerk DEC 2 1986 (2)

4/28/86 Costs paid by: McCorkle, Pedigo + $30
+1

Summons of Garnishment

In the State Court of Chatham County
Room 308, Chatham County Courthouse
Savannah, Chatham County, Georgia

Garnishment Number 84-4100 Civil Action Number 8-389

John T. Sparkman, Jr.
Plaintiff's Attorney
604 East 72nd St., Savannah, Ga. 31405
Address

Amount Claimed by Plaintiff $427.53
Court Costs Due $52.00

To:
John H. Mackey, Trustee
South Atlantic Employee
Vacation/Holiday Fund
221 East Lathrop Avenue
Savannah, Georgia

Lanier Collection Agency & Service, Inc.

Plaintiff

vs.

Louis Hammett SS#434-64-1387
711 East 40th Street
Savannah, Georgia

Defendant

John H. Mackey, Trustee
South Atlantic Employee
Vacation/Holiday Fund
211 East Lathrop Avenue
Savannah, Georgia

Garnishee

Summons of Garnishment

YOU ARE HEREBY COMMANDED to immediately hold all property, money, wages, except what is exempt, belonging to the defendant, or debts owed to the defendant named above at the time of service of this summons and the time of making your answer. Not sooner than 30 days but not later than 45 days after you are served with this summons, you are commanded to file your answer in writing with the Clerk of this Court and serve a copy upon the plaintiff or his attorney named above. Money or other property subject to this summons should be delivered to the Court with your answer. Should you fail to answer this summons, a judgement will be rendered against you for the amount the plaintiff claims due by the defendant. The garnishee may deduct $15 or 10% of the amount paid into Court, whichever is greater, not to exceed $50, as reasonable attorney's fees or expenses.

Witness the Honorable James W. Head or the Honorable David R. Elmore, Judges, State Court of Chatham County, Georgia.

Filed in Office, November 2, 1984 Jeff F. Dickey,
CLERK, STATE COURT OF CHATHAM COUNTY, GEORGIA.

By: (Illegible)
DEPUTY CLERK, S.C. OF C.C.

IMPORTANT INSTRUCTIONS

1. Answer cannot be filed sooner than 30 days after service of summons of garnishment of the garnishee, and no later than 45 days after service of summons on the garnishee.

Summons of Garnishment

2. File your answer at Room 308, Chatham County Courthouse, Savannah, Ga. 31401.

3. If you are not familiar with the Georgia Law applying in garnishment cases, consult your attorney or otherwise obtain correct information, before paying the defendant any sum after you have been served with this summons of garnishment.

4. A letter is insufficient, even though the defendant is not employed by you. A sworn answer must be filed.

5. Plaintiff or his counsel is the only one who can authorize the Court to issue a release, and relieve you of filing an answer to this summons.

6. Failure of garnishee to answer may result in default judgement against the garnishee.

Georgia, Chatham County

I have this day served the defendant

.....

Personally with a true copy of the within petition and summons.

This ..... day of ..... 19 ..... .

.....

Deputy Sheriff, State Court of Chatham County

Summons of Garnishment

Georgia, Chatham County

I have this day at the hour of ..... served the summons of garnishment upon ..... by handing the original of same to .... in person ..... being ..... and agent in charge of ..... at time of service in .....Chatham County, Georgia

This ..... day of ..... 19.....

.....

Deputy Sheriff, State Court of Chatham County

Answer of Garnishee

IN THE

STATE COURT OF CHATHAM COUNTY

SAVANNAH, GEORGIA

GARNISHMENT NO. 84-4100

CIVIL ACTION NO. 81-389

AMOUNT CLAIMED BY PLAINTIFF $427.53;
COURT COSTS DUE $52.00

LANIER COLLECTION AGENCY & SERVICE, INC.,

Plaintiff,

v.

LOUIS HAMMETT,
SS 434-64-1387

Defendant,

JOHN H. MACKEY, TRUSTEE,

Garnishee.

ANSWER OF GARNISHEE

Comes now garnishee, John H. Mackey as trustee, by and through his undersigned counsel, Fletcher Farrington, and answering the garnishment herein, shows the Court that the South Atlantic I.L.A./Employers Vacation and Holiday Fund is subject to the Employees Retirement and Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.;* is an employee welfare benefit fund within the

meaning of 29 U.S.C. § 1002(1); and is therefore not subject to garnishment under the applicable garnishment statute, O.C.G.A. § 118-4-22.1. *Goddard* v. *Boozer*, 160 Ga. App. 303, 305 (1981).

WHEREFORE, garnishee having fully answered, prays that this action be dismissed.

FLETCHER FARRINGTON, P.C.
Post Office Box 9378
Savannah, Georgia 31412

By: /s/ FLETCHER FARRINGTON
FLETCHER FARRINGTON
Attorney for John Mackey, Garnishee

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

PETITIONER'S

BRIEF

No. 86-1387

(5)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR PETITIONERS

THOMAS W. GLEASON*
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

FARRINGTON & ABBOT, P.C.
P.O. Box 9378
Savannah, Georgia 31412

Counsel for Petitioners

*Counsel of Record

Of Counsel:

ERNEST L. MATHEWS, JR.
CHARLES R. GOLDBURG
KEVIN MARRINAN

63PP

Questions Presented

1. Whether § 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1144(a), preempts state laws insofar as they permit judgment creditors to garnish assets held by employee welfare benefit plans covered by ERISA?

2. If state garnishment procedures are not totally preempted, whether ERISA preempts the states from exempting employee welfare funds or benefits from garnishment?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1387

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOANE, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR PETITIONERS

Opinions Below

The opinion of the Supreme Court of Georgia is reported at 256 Ga. 499, 350 S.E. 2d 439 (1986) and is reproduced as Appendix A to the petition for certiorari. The opinion of the Court of Appeals of Georgia is reported at 178 Ga. App. 467, 343 S.E. 2d 492 (1986) and is reproduced as Appendix B to the petition for certiorari. The opinion of the State Court of Chatham County, Georgia

is unreported and is reproduced as Appendix C to the petition for certiorari.

Jurisdiction

The judgment of the Supreme Court of Georgia was entered on December 2, 1986. The petition herein was filed on February 17, 1987, and granted on June 22, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), since the validity of a state statute is drawn in question on the ground of its being repugnant to the laws of the United States.

Constitutional and Statutory Provisions Involved

Constitution of the United States, Article VI, Clause 2.

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Employee Retirement Income Security Act § 4, 29 U.S.C. § 1003.

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter [ERISA] shall apply to any employee benefit plan if it is established or maintained—

> (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

> (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> (3) by both.

Employee Retirement Income Security Act § 206(d)(1), 29 U.S.C. § 1056(d)(1).

(1). Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

Employee Retirement Income Security Act § 514(a), 29 U.S.C. § 1144(a).

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

Official Code of Georgia Annotated § 18-4-20.

Property subject to garnishment generally.

(a) As used in this Code section, the term:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of the amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) All debts owed by the garnishee to the defendant at the time of service of the summons of garnishment upon

the garnishee and all debts accruing from the garnishee to the defendant from the date of service to the date of the garnishee's answer shall be subject to process of garnishment; and no payment made by the garnishee to the defendant or to his order, or by any arrangement between the defendant and the garnishee, after the date of the service of the summons of garnishment upon the garnishee, shall defeat the lien of such garnishment.

(c) All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee or coming into the possession or control of the garnishee at any time from the date of service of the summons of garnishment upon the garnishee to the date of the garnishee's answer shall be subject to process of garnishment except, in the case of collateral securities in the hands of a creditor, such securities shall not be subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.

(d) (1) Notwithstanding subsection (a) of this Code section, the maximum part of the aggregate disposable earnings of an individual for any work week which is subject to garnishment may not exceed the lesser of:

(A) Twenty-five percent of his disposable earnings for that week; or

(B) The amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage prescribed by § 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, § 206(a)(1), in effect at the time the earnings are payable.

(2) In case of earnings for a period other than a week, a multiple of the federal minimum hourly wage equivalent

in effect to that set forth in subparagraph (d)(1)(B) of this Code section shall be used.

(e) The limitation on garnishment set forth in subsection (d) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant unless the garnishee has received a summons of garnishment based on a judgment for alimony or the support of a dependent, in which case the limitation on garnishment set forth in subsection (f) of this Code section shall apply although the garnishee may receive a summons of garnishment in more than one garnishment case naming the same defendant. No garnishee shall withhold from the disposable earnings of the defendant any sum greater than the amount prescribed by subsection (d) or subsection (f) of this Code section, as applicable, regardless of the number of summonses served upon the garnishee.

(f) The exemption provided by subsection (d) of this Code section shall not appiy if the judgment upon which the garnishment is based is a judgment for alimony or for the support of any dependent of the defendant, provided the summons of garnishment shall contain a notice to the garnishee that the garnishment is based on the judgment for alimony or the support of a dependent. In any case in which the garnishment is based on the judgment, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment shall be 50 percent of the individual's disposable earnings for that week.

Official Code of Georgia Annotated § 18-4-22.1.

Garnishment of funds or benefits of pension, retirement, or employee benefit plans and programs which are subject to the Employee Retirement Income Security Act of 1974.

Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended, shall not be subject to the process of garnishment (1) until such funds or benefits are currently due and payable or transferable to a member of such plan or program or to a beneficiary thereof and (2) unless such garnishment is based upon a judgment for alimony or for child support, in which event such funds or benefits shall then be subject to the process of garnishment to the extent provided in subsection (d) of Code Section 18-4-20.

Statement of the Case

Petitioners are the trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund ("V&H Fund"), which was created pursuant to a collective bargaining agreement between the International Longshoremen's Association, AFL-CIO ("ILA") and the South Atlantic Employers Negotiating Committee ("SAENC").[1] The Fund provides vacation and holiday benefits to eligible employees in the thirteen South Atlantic ports covered by the SAENC-ILA collective bargaining agreement. It is an employee welfare benefit plan as defined in Section

[1] The ILA is a labor organization representing longshoremen, clerks, checkers, and other waterfront employees on the Atlantic and Gulf Coasts of the United States. SAENC is the multiemployer bargaining association representing longshore employers in the ports of Morehead City, Wilmington, and Southport, North Carolina; Georgetown, Charleston and Port Royal, South Carolina; Savannah, Brunswick, and St. Mary's, Georgia; and Ferandina, Jacksonville, Tampa, and Port Manatee, Florida.

3(1) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002(1).[2] Employees' qualifications for participation in the Fund and their entitlement to benefits are determined annually. App. at 5a; 8a.[3]

Respondent Lanier Collection Agency & Service, Inc. is a collection agency operating in the State of Georgia. Lanier has obtained judgments against twenty-three Savannah longshoremen who are eligible to receive vacation and holiday benefits from the V&H Fund. Pet. App. A 19. None of the judgments represents claims for alimony or child support.[4] In November 1984, Lanier instituted garnishment proceedings in the State Court of Chatham County, Georgia, seeking to garnish the vacation and holiday benefits which were payable by the V&H Fund to the Savannah longshoremen. JA 5a. Under Georgia law, "all property, money, or effects of the defendant in the possession or control of the garnishee . . . shall be subject to the process of garnishment." OCGA § 18-4-20.

The fund answered the complaints in the garnishment proceeding, claiming that, since it was an employee wel-

[2] § 3(1) of ERISA defines "employee welfare benefit plan" as any plan, fund or program established for the purpose of providing *inter alia* vacation benefits. 29 U.S.C. § 1002.

[3] The Agreement and Declaration of Trust and Plan of the South Atlantic ILA/Employers Vacation and Holiday Fund is on file with the Internal Revenue Service in connection with an application for tax-exempt status filed pursuant to IRC § 501(c)(9) and may be judicially noticed by this Court. 26 U.S.C. § 501(c)(9). A copy of the trust agreement is reproduced as Appendix A to this brief and will be cited herein "App. A at —a". References to the Joint Appendix will be cited "JA—a". References to the Appendices to the Petition for a Writ of Certiorari will be cited "Pet. App. A—".

[4] Under the Official Code of Georgia Annotated ("OCGA") § 18-4-22.1, garnishment is available to enforce alimony or child support obligations. However, it is undisputed that the judgments which Lanier seeks to enforce do not arise from alimony or support obligations.

fare benefit plan subject to ERISA, its funds or benefits were not subject to garnishment. JA 9a. By order dated March 20, 1985, the State Court of Chatham County upheld the garnishments. Pet. App. A-11 - A-21. The trial court referred to legislative history to construe the Georgia statute and concluded that OCGA § 18-4-22.1 did not protect welfare benefits from garnishment, since the Georgia legislature had intended "to make Georgia law identical to the federal law." Pet. App. A 20.[5]

The Georgia Court of Appeals reversed and determined that vacation and holiday benefits were not subject to garnishment. Pet. App. A-6 - A-10. It held that the language of OCGA § 18-4-22.1 clearly and unambiguously indicated that the Georgia legislature intended to protect vacation plans from garnishment, so that the trial court erred in resorting to the legislative history to determine legislative intent. Pet. App. A-8. The court further held that the Georgia legislature was not preempted by ERISA § 514(a), 29 U.S.C. § 1144(a), from extending the prohibition against garnishment to welfare benefits. *Id.*[6] Despite ERISA's

[5] The court first held that "only pension funds and not vacation funds are exempt from garnishment under the Employee Retirement Income Security Act." Pet. App. A 19. Based on the legislative history to OCGA § 18-4-22.1, the court concluded that Georgia's exemption from garnishment was no broader than that provided by ERISA. *Id.* A-20.

[6] Section 206(d)(1) of ERISA requires that "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). This provision against alienation of benefits has been applied to involuntary alienation such as garnishment. *Tenneco, Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983). *Cf.* 26 C.F.R. 1.401(a)-13(b)(1) (Treasury regulation interpreting identical provision of Internal Revenue Code). In view of ERISA's specific prohibition against alienation of pension benefits and its express provision superseding state law, 29 U.S.C. § 1144, respondent argued to the Georgia Court of Appeals that the state was preempted from exempting welfare benefits from the state's own garnishment procedures.

broad language preempting "any and all State laws insofar as they . . . relate to any employee benefit plan," 29 U.S.C. § 1144(a), the court of appeals, relying on this Court's statement in *Shaw* v. *Delta Air Lines*, 463 U.S. 85, n.21 (1983) that, "[S]ome state actions may affect employee benefit plans in too tenuous, remote or peripheral a manner to warrant a finding that the law 'relates to' the plan", found that the Georgia statute's "regulatory effect is too minimal and therefore insufficient to invoke ERISA's preemption provision." Pet. App. A-9. The court of appeals noted that "The enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA with respect to welfare plans." *Id.* (quoting *Electrical Workers Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154, 159 (Mo. 1979)). Thus, the court of appeals concluded that OCGA § 18-4-22.1 was not preempted by ERISA.

The Supreme Court of Georgia reversed. Pet. App. A-1 - A-5. It agreed that OCGA § 18-4-22.1 was indeed intended to protect welfare benefits from the process of garnishment, Pet. App. A-2, but held that, because the V&H Fur was "subject to garnishment under ERISA," *Id.*, OCGA § 18-4-22.1 was preempted. The court reasoned that OCGA § 18-4-22.1 "relates to ERISA since it purports to regulate garnishment of ERISA funds and benefits, a matter specifically provided for under ERISA . . ." and "prohibits that which the federal statute permits and is therefore in conflict with it." Pet. App. A-4, *citing Alessi* v. *Rybestos-Manhattan, Inc.*, 451 U.S. 504 (1981). The Georgia Supreme Court held that the statutory exemption of § 18-4-22.1 is preempted "insofar as it conflicts with ERISA" and that the V&H Fund is subject to garnishment.

Summary of Argument

ERISA § 514(a) expressly preempts all state laws relating to employee benefit plans. This broad preemption provision is not limited to statutes purporting to directly regulate ERISA plans nor to state laws that are antagonistic to the federal statute. Rather, Congress intended to occupy the field of employee benefit plans and to insure consistency of regulation by a sweeping preemption of all state laws relating to them. The phrase "relates to" is to be understood in its ordinary meaning, so that any state law that has a connection with or reference to an ERISA plan is preempted.

State garnishment proceedings, including the Georgia garnishment statute, relate to ERISA welfare plans when those plans are made subject to garnishment. Plan trustees are required to become parties to actions in state courts, which may give rise to conflicting or inconsistent decisions. Plan assets are required to be expended in a manner other than as mandated by Congress in ERISA. The already complex administration of welfare plans is further complicated by compliance with various state garnishment requirements, especially in the case of multiemployer plans covering more than one state. The impact of the state garnishment procedures on the plans is far too severe to be considered tenuous, remote, or peripheral. Hence, these state laws relate to ERISA welfare plans and are preempted.

If the Georgia garnishment statute itself is not preempted by ERISA, the Georgia provision exempting welfare funds from garnishment is also saved from preemption. The only way the entire state garnishment procedure could escape preemption under ERISA § 514(a) would be if it did not relate to ERISA welfare funds. If the effect

of the statutory scheme which imposes garnishment does not have sufficient impact upon the employee benefit plans so as to be preempted, the exceptions to the imposition of garnishment must likewise fall outside the preemption provision. Indeed, the Georgia exemption provisions have the least connection with the ERISA plan and would be the last to be preempted. The decision of the Georgia Supreme Court inverts Congressional priorities by saving the state laws that most severely affect employee benefit plans and striking down the state statute that has a more minimal, and indeed, ameliorative, effect.

ARGUMENT

I.

State Garnishment Statutes Are Preempted by Section 514(a) of ERISA

The Georgia Supreme Court erred in failing to give effect to the sweeping express preemption enacted by Congress in ERISA.[7] ERISA § 514(a) provides

> the provisions of this subchapter . . . shall supersede *any and all State laws* insofar as they may now or hereafter *relate to any employee benefit plan* described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

29 U.S.C. § 1144(a) (emphasis supplied).[8]

---

[7] In holding that the Georgia statute exempting welfare plans from garnishment is preempted by ERISA and that, therefore, the V&H Fund was subject to garnishment, the Georgia Supreme Court necessarily held that Georgia's garnishment procedures are not themselves preempted.

[8] ERISA § 1144(c)(1) is equally broad, defining state law as including "all laws, rules, regulations or other State action having the effect of law, of any state." 29 U.S.C. § 1144(c)(1). OCGA § 18-4-20 and § 18-4-22.1 are unquestionably state laws within the meaning of ERISA's preemption provision.

All parties concede that the V&H Fund is an employee benefit plan as described in ERISA § 4(a), 29 U.S.C. § 1003(a). If, then, the Georgia garnishment statute "relates to" the V&H Fund, it is preempted under § 514(a).

The principles to be applied to determine whether a state law is preempted by ERISA have been enunciated by this Court in a series of five decisions spanning the past six years. *Fort Halifax Packing Company, Inc.* v. *Coyne*, 55 U.S.L.W. 4699 (U.S. June 1, 1987) (holding that a state statute that mandated a one-time severance benefit did not relate to an ERISA employee benefit plan because no plan was established by the statute); *Pilot Life Insurance Co.* v. *Dedeaux*, 107 S.Ct. 1549 (1987) (holding that a state common law action for bad faith failure to pay disability benefits related to an employee benefit plan and was preempted); *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724 (1985) (holding that a state statute mandating a minimum mental health care benefit in insurance policies related to an employee benefit plan but was saved from preemption by the insurance savings clause); *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983) (holding that a state employment discrimination law and disability benefits law related to an employee benefit plan and were preempted, except to the extent that the state statute was employed to enforce Title VII of the Federal Civil Rights Act); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981) (holding that a state statute prohibiting plan integration of pension and workers' compensation benefits related to an employee benefit plan and was preempted).

ERISA § 514(a) is deliberately broad and expansive and was meant to establish pension plan regulation as exclusively a federal concern. *Fort Halifax*, 55 U.S.L.W. at 4701, 4702; *Pilot Life*, 107 S.Ct. at 1555; *Metropolitan*, 471 U.S. at 739; *Shaw*, 463 U.S. at 98-101, 104; *Alessi*, 451 U.S. at 523. The virtually all-inclusive preemption provision of § 514(a) effectuates Congress' intent in ERISA to occupy the field of employee benefit plans as reflected in the statute's legislative history. *Fort Halifax*, 55 U.S.L.W. at 4701; *Pilot Life*, 107 S.Ct. at 1552, 1557; *Metropolitan*, 471 U.S. at 747; *Shaw*, 463 U.S. at 99-100; *Alessi*, 451 U.S. at 521.

State law is preempted if it "relates to" an ERISA plan. This Court has consistently held that this phrase must be "given its broad common-sense meaning such that a state law 'relate[s] to' a benefit plan in the normal sense of the phrase, if it has a connection with or reference to such a plan." *Pilot Life*, 107 S.Ct. at 1553; *Fort Halifax*, 55 U.S.L.W. at 4701; *Metropolitan*, 471 U.S. at 739; *Shaw*, 463 U.S. at 96-97; *Alessi*, 451 U.S. at 524. The Court's approach is consistent with the understanding of the draftsmen of § 514, who envisioned that its preemptive sweep would reach any state law "which would *affect* any employee benefit plan covered by ERISA." Remarks of Rep. Dent, 120 Cong. Rec. 29197 (1974) (emphasis supplied).

The broad scope of ERISA's preemption is not limited to state laws that have the regulation of employee benefit plans as their direct object. *Fort Halifax*, 55 U.S.L.W. at 4701, 4702; *Pilot Life*, 107 S.Ct. at 1553-54; *Metropolitan*, 471 U.S. at 739; *Shaw*, 463 U.S. at 98; *Alessi*, 451 U.S. at 525.

> It is of no moment that [the state] intrudes indirectly, through a workers' compensation law rather than directly, through a statute called 'pension regulation.' ERISA makes clear that even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern.

Alessi, 415 U.S. at 525.

Nor is preemption confined, as the Georgia Supreme Court seems to have thought, to situations where there is a conflict or repugnance between the state law and the purposes or terms of ERISA. *Fort Halifax*, 55 U.S.L.W. at 4702; *Pilot Life*, 107 S.Ct. at 1553; *Metropolitan*, 471 U.S. at 739; *Shaw*, 463 U.S. at 98; *Alessi*, 451 U.S. at 525. On the contrary,

> [T]he preemption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements.

Metropolitan, 471 U.S. at 739.

Applying the principles reiterated by this Court, there can be no doubt that application of state garnishment proceedings to ERISA plans brings those state laws within the preemptive scope of § 514(a). Under the Georgia procedure and statutes like it, the fund trustees must become parties to a state action. They are served with a Summons of Garnishment, JA 5a-7a, and must apppear and pay the money into court even if there is no contest. *See* OCGA §§ 18-4-62, 18-4-83, 18-4-84. As garnishees, they must make decisions with respect to the validity and priority of garnishments. If necessary, they must litigate these isses, with all the cost in effort and money entailed.[9]

If subject to state garnishment, the trustees would be required to turn over to the judgment creditor plan assets before they have been paid out in accordance with the plan. This would conflict with the trustees' duties under the federal statute to hold and expend trust assets ex-

[9] Other states have a more simplified procedure. *See e.g.*, N.Y. Civ. Prac. L. & R. § 5231 (McKinney 1978); N.J. Stat. Ann. § 2A:17-50, et seq. (West 1987). But, should the trustees be for any reason unwilling to comply with the garnishment notice, litigation ensues.

clusively to pay benefits and defray reasonable administration expenses. ERISA §§ 403(c)(1), 404(a)(1)(A), 29 U.S.C. §§ 1003(c)(1), 1104(a)(1)(A). Indeed, to comply with state garnishment requirements, the trusteés could be exposed to personal liability for breach of their fiduciary obligations. *See* ERISA §§ 409, 502, 29 U.S.C. §§ 1109, 1132.[10]

At the very least, compliance with state garnishment procedures would subject employee benefit plans to increased administrative burdens and costs. The present case is a prime example. In this one proceeding alone, Lanier seeks to enforce garnishments against 23 individuals. However, in the year 1984, at least 109 separate garnishment proceedings were commenced against the V&H Fund. A list of these cases appears as Appendix B to this brief. Not only would the V&H Fund be required to confirm the identity of these individuals, but it would be put to considerable burden to calculate the participants' entitlements, so as to compute, within the 45 days between service of the summons of garnishment and the reply, what amount should be paid into state court. Entitlement to vacation and holiday benefits, as well as the amount of the benefit, depends upon eligibility requirements to be met in the contract year for which the benefit is paid.[11] The

[10] The practical likelihood of personal liability is admittedly small. Since the trustees would have acted under compulsion of state law, they would probably be exonerated of their failure to comply with the ERISA requirements. However, the fact that such exoneration would be necessary underscores the conflict between the trustees' duties under ERISA and their obligations under state garnishment laws.

[11] In order to be credited with a year of service, the employee must have worked 700 or more hours for employers who are party to the contract. In certain circumstances, employees receive credit toward the service requirement for service in the armed forces, service as a union official, and, if work is not available, receipt of guaranteed annual income benefits. Employees also receive partial credit for receipt of compensation benefits for occupational and non-occupational injuries. App. A at 4a-11a.

fund disburses vacation and holiday benefits annually after the close of the contract year. Since employees frequently qualify for vacation and holiday benefits in the fourth quarter, the fund cannot make a determination that an employee is ineligible, and thus has no benefit to garnish, until the contract year has expired. In the case of late qualifiers, garnishment notices would have to be retained by the fund for up to a one-year period before it could know whether it was in possession of any asset that could be subject to the garnishment.

In addition, the limitation imposed by OCGA § 18-4-20(d) on the amount of earnings subject to garnishment would require the fund to compute 25% of the employee's combined vacation and holiday benefit and compare that figure to the amount by which the combined vacation and holiday benefit exceeds thirty times the federal minimum hourly wage times fifty-two weeks. The amount of the vacation and holiday benefit which is subject to garnishment cannot exceed the lesser of these two amounts.

Since the administration of a welfare benefit plan, in and of itself, is an exceedingly complex administrative activity, one of Congress' concerns in adopting a broad preemption policy was to shield plan trustees from the additional administrative burden of compliance with state laws. *Fort Halifax*, 55 U.S.L.W. at 4702. Permitting plans to be subject to state garnishment procedures is in direct conflict with that purpose.

ERISA's intent to alleviate the complexity of administration of employee benefit plans is even more compelling in the case of a multiemployer plan such as the V&H Fund. The fund provides a holiday benefit equivalent to sixteen paid holidays and a vacation benefit of one to four weeks salary, depending on the employee's prior years of service in the longshore industry, to thousands of eligible em-

ployees, employed in four different states. App. A at 2a, 5a. To fund the vacation and holiday benefits, the plan's trustees are authorized pursuant to the collective bargaining agreement to establish a uniform tonnage assessment on import and export cargo moving through the ports covered by the contract. Amendment to FMC Agreement 201-000089-002 (on file with the Federal Maritime Commission). Thus, the administration of the V&H Fund is an exceedingly complex activity even without the additional burden of complying with state garnishment procedures.

The problem is exacerbated where, as here, the multiemployer plan operates on a multi-state basis. Allowing the states to apply their garnishment laws to welfare plans would not only burden the plan trustees with complicated garnishment calculations, but would also involve the regulation of plan administration under state substantive law. Many states recognize trust "spendthrift" provisions that the beneficiary's interest may neither be assigned nor alienated. *See, e.g.*, Va. Ann. Code § 55-19; La. Rev. Stat. Ann. § 9:2001; N.Y. Est. Powers & Trusts 7-1.5(a)(1). Indeed, the contracting parties included such a provision in the SAENC/ILA Vacation and Holiday Trust Agreement. App. A at 18a. If state garnishment procedures are not preempted by ERISA § 514, state courts will be called upon to review welfare plan documents to determine whether the participants' right to benefits constitutes an exempt "trust interest" under the state's garnishment law. Should the state courts determine that the fund is a trust interest, they would then have to determine whether a state spendthrift provision, which would prevent such garnishment, should be enforced or is contrary to public policy. These adjudications by the state courts would inevitably lead to conflicting decisions. *Compare Laborers Union Local 1298 of Nassau and Suffolk Counties Vaca-*

tion Fund v. *Frank L. Lyon & Sons, Inc.*, 66 Misc. 2d 1042, 323 N.Y.S. 2d 229 (N.Y. Sup. Ct. 1971) with *Electrical Workers Local 1 Credit Union* v. *IBEW Holiday Trust*, 583 S.W.2d 154 (Mo. 1979). Indeed, in the case of a multi-state plan like the V&H Fund, the same plan could be subject to different substantive and procedural rules in different states.

This Court has predicted the scenario and the solution.

> A plan would be required to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others.
>
> * * *
>
> A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them. Preemption ensures that the administrative practices of a benefit plan will be governed by only a single set of regulations.

Fort Halifax, 55 U.S.L.W. at 4701, 4702.

The potential for this kind of administrative nightmare is directly contrary to what this Court has noted is the purpose behind the ERISA preemption provision, to eliminate "the threat of conflicting and inconsistent state and local regulation." *Id.*

The manifest effect that application of state garnishment procedures will have on ERISA welfare plans brings those state laws easily within the pervasive preemption of ERISA § 514(a). Although the enforcement of state judgments through state garnishment procedures is a legitimate area of state concern which is not to be lightly disregarded in our federal system, this consideration cannot overcome an "explicit congressional statement about the pre-emptive effect of its action," *Alessi*, 451 U.S. at 522, such as ERISA § 514(a).[12]

A later amendment of § 514 confirms that Congress intended that provision to displace state garnishment procedures. In 1984 Congress adopted § 514(b)(7), exempting from preemption qualified domestic relations orders (within the meaning of [29 U.S.C.] section 1056(d)(3)(B)(i)). 29 U.S.C. § 1144(b)(7). That Congress felt constrained to expressly exempt domestic relations orders indicates its understanding that, without the exception, the all-inclusive sweep of § 514(a) would preempt these state orders. Since Congress limited the exemption to domestic relations orders, it follows that state laws with respect to the enforcement of other kinds of orders or judgments remain preempted.

Despite the breadth of ERISA preemption, this Court has recognized that there are limits to its displacement of state law. "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Shaw*, 463 U.S. at 101 n.21. *See also Alessi*, 451 U.S. at 525, 525

---

[12] Moreover, the effect of preemption on state creditors will be minimal. In the case of welfare plans like the V&H Fund, participants are by definition employed, so that their regular wages are subject to garnishment to satisfy creditors' claims. The welfare benefits themselves are regularly distributed to plan participants and, of course, are then subject to collection by the creditors directly from the debtor with no plan involvement. The minor inconvenience to creditors and slight intrusions upon state collection procedures are hardly sufficient reason to disregard the express will of Congress and subject ERISA welfare funds to the deep entanglement with state procedures that must result if there is no preemption.

n.21.[13] As in earlier cases, the litigation at bar "plainly does not present a borderline question." *Shaw*, 462 U.S. at 101 n.21. The effect of state garnishment proceedings upon ERISA plans is so palpable that invocation of the "tenuous, remote, or peripheral" doctrine would defy reality. If state garnishment laws, which haul fund trustees into state courts in adversarial proceedings, which require them to expend fund assets for purposes other than those sanctioned by ERISA, and which compel them to make complicated calculations under conflicting state laws and formulae, do not have connection with or reference to the ERISA plans, the phrase "relate to" has lost all meaning.

II.

If the Georgia Garnishment Statute Is Not Preempted by ERISA, the Georgia Exemption Provision Is Also Saved From Preemption

Since the Georgia garnishment statute has a significant connection with employee benefit plans, it clearly relates to those plans within the meaning of § 514(a) and is preempted. However, should this Court hold that the Georgia garnishment statute is not preempted by ERISA, *a fortiori* the Georgia provision exempting ERISA plans from garnishment would also not be preempted.

The only ground on which the state garnishment procedure in its entirety could be saved from preemption would be that its application to ERISA welfare funds was only tenuous, remote and peripheral, insufficient to defeat the state's right to enforce its judgments. But, if application of Georgia's entire garnishment procedures has such a slight impact that they cannot be said to be

[13] This Court declined to express its views on the merits of the lower court decisions it mentioned in this connection. *Alessi*, 451 U.S. at 525 n.21; *Shaw*, 463 U.S. at 101 n.21.

"related" to the funds so as to trigger preemption, it would follow that the exemption provisions would also be insufficiently connected. An exemption from, or exception to, a statutory scheme must logically have less impact on the object of the scheme than the substantive provisions. Indeed, exemptions like that of OCGA § 18-4-22.1 would have the *least* connection with or effect upon the ERISA plan. If those provisions which create involvement of the plan in state proceedings do not relate to the plan, those provisions that dispel the involvement cannot possibly relate. To invert the relationship, as the Georgia Supreme Court did, gives rise to a Kafkaesque result.

Since OCGA § 18-4-22.1 provides that funds or benefits of an ERISA plan "shall not be subject to the process of garnishment," the section by its terms excludes ERISA plans from state regulation. The purpose of the ERISA preemption provision, which is to avoid state regulation of ERISA plans, is hardly furthered by the invalidation of the exemption. Indeed, by finding OCGA § 18-4-22.1 preempted, the Georgia Supreme Court arrived at the paradoxical result that ERISA plans were subject to state garnishment. In the guise of applying the ERISA preemption provision, the Georgia Supreme Court actually frustrated the purpose of the supersedure statute.

The Georgia court's error is rooted in its applying a conflicts approach, which this Court has said is not the basis of ERISA preemption. *Fort Halifax*, 55 U.S.L.W. at 4702; *Pilot Life*, 107 S.Ct. at 1553; *Metropolitan*, 471 U.S. at 739; *Shaw*, 463 U.S. at 98; *Alessi*, 451 U.S. at 525. When the correct test is applied, it is manifest that the exemption from state garnishment is related to ERISA plans to the same or less degree as the imposition of state garnishment laws. At the very least, the two stand or fall together.

CONCLUSION

For the foregoing reasons the judgment of the Supreme Court of Georgia should be reversed.

Dated: August 27, 1987

Respectfully submitted,

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

FARRINGTON & ABBOT, P.C.
Post Office Box 9378
Savannah, Georgia 31412
Attorneys for Petitioners

Of Counsel:

ERNEST L. MATHEWS, JR.
CHARLES R. GOLDBURG
KEVIN MARRINAN

APPENDICES

APPENDIX A

AGREEMENT AND DECLARATION OF TRUST AND PLAN

of the

SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND

WHEREAS, pursuant to the Collective Bargaining Agreement covering the period from October 1, 1980 to September 30, 1983 the South Atlantic Employers Negotiating Committee ("Employers") and the South Atlantic and Gulf Coast District, International Longshoremen's Association, AFL-CIO ("ILA" or "Union") agreed to the establishment of the South Atlantic ILA/Employers Vacation and Holiday Fund to be administered in accordance with the provisions of the Collective Bargaining Agreement between the Employers and ILA for the payment of holiday and vacation benefits to eligible employees (as hereinafter defined) who are employed in the Ports of Jacksonville, Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Brunswick, St. Mary's, Fernandina, Tampa, and Port Manatee.

and

WHEREAS, Employers have designated the following individuals as their Trustees of the Fund and Plan:

Gary Wise
W. O. Waters
Karl Wettstein
A. Fernando Torres
James Hayes
Edward Cawthon

and

Appendix A

WHEREAS, ILA has designated the following individuals as their Trustees of the Fund and Plan:

Willie Sloan
Benjamin Flowers
John Mackey
Richard McPherson
Landon L. Williams
Perry C. Harvey, Jr.

NOW, THEREFORE, the above-named individuals declare that they agree to and will serve as Trustees of the Fund and Plan in accordance with the duties, powers and uses hereinafter set forth.

ARTICLE I

Definitions

1. The term "Employers" shall include the contracting stevedores who employ labor covered under the Longshoremen's Agreement and/or the Clerks and Checkers Agreement between the SOUTH ATLANTIC EMPLOYERS NEGOTIATING COMMITTEE and the SOUTH ATLANTIC and GULF COAST DISTRICT of the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, and all companies covered by the aforesaid agreements which contract with the contracting stevedores to work cargo vessels in the Ports of Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Brunswick, St. Mary's, Fernandina, Jacksonville, Tampa and Port Manatee, and any company which directly or indirectly utilizes the services of any employees covered by the aforesaid agreements which subscribes to and agrees to be bound by the terms of said collective bargaining agreements or so much thereof as is applicable to

Appendix A

contributions to and administration of this Agreement and Declaration of Trust.

2. The term "Employees" shall include all employees covered by the Longshoremen's Agreement and the Clerks and Checkers Agreement.

3. "Contract Year" shall mean October 1st of each year, during the term of the collective bargaining agreement, to September 30th of the subsequent year.

4. The term "collective bargaining agreement" shall mean the current Longshoremen's Agreement and Clerks and Checkers Agreement between the SOUTH ATLANTIC EMPLOYERS NEGOTIATING COMMITTEE and the SOUTH ATLANTIC and GULF COAST DISTRICT, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO.

ARTICLE II

Assets of the Fund

1. The Fund shall consist of all monies received by it from the South Atlantic ILA/Employers District Escrow Fund pursuant to the provisions of the Collective Bargaining Agreement as well as any income derived therefrom.

2. Checks to the Fund shall be made payable to the South Atlantic ILA/Employers Vacation and Holiday Fund.

ARTICLE III

Purposes of the Fund

It is agreed that the Fund is and shall constitute an irrevocable trust created pursuant to Section 302(c) of the Labor-Management Relations Act of 1947, as amended, for

Appendix A

the benefit of certain employees to provide holiday and vacation benefits to eligible employees, as said term is hereinafter defined, and to pay for the sound and efficient administration and operation of the Fund and this Agreement and Declaration of Trust and Plan creating such Fund is the result of collective bargaining engaged in pursuant to the requirements of said Labor-Management Relations Act.

ARTICLE IV

Holiday Eligibility and Payments

1. The following will constitute paid holidays for which payments shall be made to eligible employees:

(a) Columbus Day

(b) Election Day

(c) Veteran's Day

(d) Thanksgiving Day

(e) Christmas Eve

(f) Christmas Day

(g) New Year's Eve

(h) New Year's Day

(i) Martin Luther King Day

(j) Lincoln's Birthday

(k) Washington's Birthday

(in Tampa only,
Gasparilla Day
in lieu of
Washington's Birthday)

Appendix A

(l) Good Friday

(m) Decoration Day (Memorial Day)

(n) Fourth of July

(o) Labor Day

(p) Teddy Gleason's Birthday

2. Washington's Birthday (or Gasparilla Day, in Tampa), Decoration Day, Columbus Day and Veteran's Day shall be celebrated on the date determined by the Board for their celebration.

3. Holidays falling on a Sunday shall be celebrated on the following Monday.

4. To be eligible for the payment of 16 paid holidays, for each contract year from October 1, 1980 to September 30, 1981 and for the same periods 1981-1982 and 1982-1983, an employee must have worked or been credited with 700 or more hours in the contract year. Notwithstanding the foregoing, no employee shall be permitted to qualify for any holiday benefit until he has *actually worked* 700 hours or more in a contract year in the industry. If a man leaves the industry or otherwise fails to work 700 hours or more or to receive credit for 700 hours or more in each succeeding contract year, he must requalify for holiday benefits by *actually working* 700 hours or more in a contract year after the break in service. The Trustees, for good cause shown, may waive a break in service for purposes of determining eligibility for holiday benefits.

Payment for the 16 paid holidays for the contract year 1980-81 will be made on December 15, 1981. The payment date or dates for subsequent holiday payments will be established by the Trustees of the Fund.

Appendix A

5. Credited hours of service shall be granted, except for new employees, based upon any one or combination of two or more of the following:

(a) payment for hours of employment worked for one or more of the employers or for employers of container repair and maintenance personnel who subscribe to this Agreement;

or

(b) guaranteed annual income (GAI) equivalent hours;

or

(c) in the event an employee, who is unable to work in all or part of a contract year due to an occupational injury or illness, sustained during the course of and arising out of his employment, receives payment (excluding payment for intermittent lost time) under any State or Federal Workmen's Compensation Act, such employee shall receive hours credited, toward the eligibility requirement, prorated at the rate of 20 hours per week (not to exceed a total of 700 hours in any one contract year) for each week for which payment is received. Under this sub-paragraph (c) no employee shall receive holiday benefits for more than one contract year based upon the receipt of workmen's compensation payments, except that upon return to regular employment he shall immediately be eligible for holiday payments in the contract year in which he returns;

or

Appendix A

(d) in the event an employee, who is unable to work in all or part of any contract year due to sickness or injury incurred off the job, receives non-occupational disability benefits from a Welfare Fund, such employee shall receive hours credited, towards the eligibility requirement, pro-rated at the rate of 20 hours per week (not to exceed a total of 700 hours in any one contract year) during the period such benefits are received and for an additional period of not more than 9 weeks subsequent to the cessation of the receipt of such benefits if the injury or illness continues, provided such continuation of illness or injury is substantiated to the satisfaction of the trustees;

or

(e) in the event an employee is required to serve in the Armed Forces of the United States pursuant to the Selective Service Act, or some similar mandatory military service law, but was employed by one or more of the employers including employers of container repair and maintenance personnel who subscribe to this Agreement, in the contract year immediately prior to the contract year in which he entered such military service and was re-employed in the industry within the statutory re-employment period following his release from service, upon presentation of an honorable discharge such employee shall, toward the eligibility requirement, receive pro-rated credit (not to exceed 700 hours per contract year) for each contract year or portion of contract year of such military service provided, however, the number of years of credit

given under this sub-paragraph shall not exceed the initial period of military service of an employee. Such employee shall only be paid for holidays which occur after the date on which the employee was re-employed in the industry.

6. All employees meeting the foregoing eligibility requirement shall receive payment, for each holiday in the amount of eight (8) hours pay at straight time rate in effect during the contract year in which the holidays are celebrated.

Article V

Vacation Eligibility and Payments

1. One week's vacation pay shall be granted to an employee who during any contract year (1980-81; 1981-82; 1982-83), has worked or been credited with at least 700 hours during that contract year.

2. Two weeks vacation pay shall be granted to an employee who, during any contract year, has worked or been credited with at least 700 hours during that contract year and the previous contract year.

3. Three weeks vacation pay shall be granted to an employee who, during any contract year, has worked or been credited with at least 700 hours during that contract year and the five previous contract years.

4. Four (4) weeks vacation pay shall be granted to an employee who, during any contract year, has worked or been credited with at least 700 hours during that contract year and in each of the eleven (11) previous contract years.

5. All employees meeting the foregoing eligibility requirements for one, two, three or four weeks vacation pay, as hereinabove set forth, will receive 40 hours pay at the straight time rate for the gangman category set out in the collective bargaining agreement in effect during the contract year in which he is eligible for vacation, for each week of vacation to which he is entitled.

6. Notwithstanding the foregoing, no employee shall be permitted to qualify for any vacation benefit until he has *actually worked* 700 hours or more in a contract year in the industry. If a man leaves the industry or otherwise fails to work 700 hours or more or to receive credit for 700 hours or more in each succeeding contract year, he must requalify for vacation benefits by *actually working* 700 hours or more in a contract year after such break in service. The Trustees, for good cause shown, may waive a break in service for purposes of determining eligibility for vacation benefits.

7. Credited hours of service shall be granted based upon any one or combination of two or more of the following:

(a) payment for hours of employment worked for one or more of the employers or for employers of container repair and maintenance personnel who subscribe to this Agreement;

or

(b) GAI equivalent hours;

or

(c) in the event an employee who is unable to work in all or part of a contract year due to an occupa-

tional injury or illness sustained during the course of and arising out of his employment, receives payment (excluding payment for intermittent lost time) under any State or Federal Workmen's Compensation Act as follows:

for the purpose of meeting the requirement of 700 hours in the current contract year for the payment of 2, 3 and 4 weeks vacation pay, hours pro-rated at the rate of 20 hours per week (not to exceed a total of 400 hours in the current contract year) for each week during the contract year for which workmen's compensation is received;

(d) for the purpose of prior contract years eligibility only for 2, 3 and 4 weeks vacation pay, in the event an employee who is unable to work in all or part of any prior contract year due to sickness or injury incurred off the job, received non-occupational disability benefits from a Welfare Fund, such employee shall receive, hours pro-rated at the rate of 20 hours per week (not to exceed a total of 700 hours in any one contract year) during the period such benefits are received and for additional periods of not more than 9 weeks subsequent to the cessation of the receipt of such benefits if the injury or illness continues provided, however, such continuation of illness or injury is substantiated to the satisfaction of the Board;

(e) in the event an employee is required to serve in the Armed Forces of the United States pursuant to the Selective Service Act, or some similar mandatory military service law, but was employed by

one or more of the employers, including employers of container repair and maintenance personnel who subscribe to this Agreement, in the contract year immediately prior to the contract year in which he entered such military service and was re-employed in the industry within the statutory re-employment period following his release from service, upon presentation of an honorable discharge, such employee shall, toward the prior contract years eligibility requirement only, for 3 and 4 weeks vacation pay, receive pro-rated credit (not to exceed 700 hours per contract year) for each contract year or portion of contract year of such military service provided, however, the number of years of credit given under this sub-paragraph shall not exceed the initial period of military service of an employee.

8. There shall be no break in service where a union officer, union employee, superintendent, or any employee of any fund jointly administered by the industry leaves such job and returns immediately to the industry.

9. Vacation payments for the contract year 1980-81 will be paid on or before December 15, 1981; the payment date or dates for the subsequent contract years shall be established by the Trustees.

Article VI

Administration of the Fund and Plan

1. The Fund and Plan shall be administered by a Board of Trustees composed of six (6) members appointed by the South Atlantic Employers Negotiating Committee and

six (6) members appointed by the Union. These members shall serve without compensation from the Fund, but shall be reimbursed for expenses properly and actually incurred in the performance of their duties as members of the Board and/or on behalf of the Fund and Plan.

The Union Trustees and the Employer Trustees shall each elect by majority vote their own Co-Chairman and they shall serve as co-Chairmen of the Board.

In the event of a disagreement or deadlock on any question before the Board, including a question of an amendment of the Plan pursuant to this Article VI, Section 5, the dispute shall be settled by arbitration in accordance with the arbitration provision in effect in the Collective Bargaining Agreement between the Employers and the ILA. The decision of the arbitrator shall be final and binding on all concerned.

2. Either the Employers or the ILA may, at any time, remove a member appointed by it and may appoint a member to fill any vacancy, whether due to death, resignation, removal, or any other cause, among the members appointed by it. Both the Employers and the ILA shall notify each other and each member of the Board in writing of the members respectively appointed by them, and upon such notice any such appointment shall be effective.

3. The Board shall have such powers as are necessary and proper for the administration of the Fund and Plan, including but not limited to the following:

(a) To make and enforce by-laws for its own government and such rules and regulations as it shall deem necessary and proper for its efficient operation, which rules and regu-

lations shall be made a part hereof, and to decide such questions as may arise in connection with the operation of the Fund and Plan;

(b) To receive monies from the South Atlantic-ILA District Escrow Fund and to hold the same until applied to the ultimate purposes provided for in this Agreement and Declaration of Trust and Plan;

(c) To prescribe procedures for the furnishing and verification of evidence necessary to establish employees' rights to benefits under the Plan;

(d) To determine all questions of eligibility for holiday and vacation payments and the method of payment thereof;

(e) To make rules and regulations, not inconsistent with the terms hereof, or the holiday and vacation provisions of the Collective Bargaining Agreement, to carry out the provisions of this Trust and Plan;

(f) To develop procedures for the establishment, compilation, tabulation, and analysis of employment records and for the determination, in accordance with the provisions of the Plan of the number of hours credited to or worked by all persons covered by this Trust and Plan;

(g) To obtain from any employer, the Union, any employee or former employee, any government agency, or any other person or body, such information as shall be necessary for proper administration of the Fund and Plan;

(h) To authorize and/or to make payments from the Fund to persons entitled to benefits under the Plan;

(i) To prepare and distribute, as required by the Employee Retirement Income Security Act of 1974 and Regu-

lations issued pursuant thereto, information concerning the Fund and Plan;

(j) To furnish to the Employers and to the ILA, upon request, such reports with respect to the administration of the Fund and Plan as are reasonable and appropriate;

(k) To obtain and analyze reports on receipts and disbursements of the Fund and Plan; to keep books of account and records of all transactions of the Board and the members of the Board acting as such; and to provide for such actuarial evaluations of the Fund and Plan as the Board shall deem desirable;

(l) To pay from the Fund all reasonable expenses of administering the Plan, including, but not limited to, all expenses which may be incurred in connection with the establishment of the Plan, the purchase or lease of such office space, materials, supplies and equipment, and the employment of such administrative, legal, expert and clerical assistance as the Board, in its discretion, finds necessary, or appropriate in the performance of its duties;

(m) To designate the depositories in which the Fund or any part thereof shall be deposited.

4. The Board shall have the books of account and records of the Fund audited by a certified public accountant who shall render, annually, a financial statement and opinion.

5. The Board shall have the power to amend this Trust and Plan at any time, or from time to time, except that no amendment shall divert the Fund, or any part thereof, to a purpose other than that set forth in Article III.

6. The Board shall file with the Secretary of Labor and make available to the Fund's participants and beneficiaries such reports and other documents as are required by Title I, Sub-Title B, Part I-Section 104 of the Employee Retirement Income Security Act of 1974. Participants and beneficiaries may be charged for such documents in such amounts as is permitted by ERISA and regulations issued pursuant thereto.

7. The Board shall have power to set up such reserves as it may deem wise for the effectuation of the purposes of the Fund.

8. The Board shall have the power to buy, sell or own title to real and personal property.

9. The Board shall have the power to invest and reinvest so much of the Fund as they deem wise and is not immediately necessary for the payment of benefits or costs of administration as herein provided, in prudent securities and investments.

10. To constitute a quorum for the transaction of business, there shall be required to be present at any meeting of the Board at least four (4) Employer members of the Board and four (4) ILA members of the Board. At all meetings of the Board the Employer members shall have a total of six (6) votes and the ILA members shall have a total of six (6) votes, the votes of any absent member being divided equally between the members present and appointed by the same party, if the alternate trustee appointed by that party is unavailable. Decisions of the Board shall be by a majority of the votes cast.

Appendix A

In the event that the Board shall meet and transact business in the absence of a quorum, the Trustees of this Fund shall have the power to ratify all actions taken and decisions made provided that each member of said Board shall sign a true and correct copy of the minutes of said meeting.

11. The Board and any of its members shall be entitled to rely upon the correctness of any information furnished by the Employers, the Union, any employer-member of Employers, the Plan Offices and the Social Security Administration.

12. Neither any employer, the Employers nor the Union shall be liable in any respect for any of the obligations of the members of the Board because such members are officers of, or in any way associated with any employer, the Employers, or the Union, it being understood that each of the members of the Board designated as a representative either of the employers or the Union acts as a representative in a statutory sense only and not as agent of any person, firm, corporation or organization.

13. The Board shall purchase fidelity bonds for each Trustee and all other fiduciaries and persons who handle funds or other property of this Fund. Said bonds shall be purchased from such corporate surety companies as are acceptable sureties on Federal bonds under the authority granted to the Secretary of the Treasury.

14. The Board may purchase fiduciary insurance in the form permitted by ERISA or any other insurance which may now or later be permitted under the terms of that Act or any regulations issued pursuant thereto.

Appendix A

15. (a) The Board may delegate any and all of its duties and powers set forth in this Article VI to a Committee of the Board. This Committee shall be composed of two (2) Employer members of the Board and two (2) ILA members of the Board.

(b) At any meeting of the Committee, to constitute a quorum there must be present one (1) Employer member of the Board and one (1) ILA member of the Board. Decisions of the Committee shall be by unanimous vote. In the event of a deadlock, the matter shall be referred to the full Board for disposition in accordance with this Article.

(c) All actions taken and decisions made by the Committee shall be submitted to the Board for ratification.

16. The Board may establish a Sub-Committee of the Board for the purpose of rendering determinations on individual claims for holiday and/or vacation pay. This Sub-Committee shall be composed of two (2) persons appointed by the Board. Decisions of the Sub-Committee shall be by unanimous vote. In the event of a deadlock, the matter shall be referred to the full Board for disposition in accordance with this Article. All actions taken and decisions made by the Sub-Committee shall be submitted to the Board for ratification.

Article VII

Miscellaneous

1. Subject to the provisions of ERISA, as may be amended from time to time, and regulations issued pursuant thereto, this Trust Agreement and Plan shall be administered, construed and enforced according to federal law and enforced in the federal courts.

Appendix A

2. The Board of Trustees shall appoint a Plan Administrator and the offices of the Board shall be 1336 Haines Street, Jacksonville, Florida 32201 and at any other offices fixed by the Board.

3. Service of process may be made upon Douglas R. Ball, Administrator, South Atlantic ILA/Employers Vacation and Holiday Fund, 1336 Haines Street, Jacksonville, Florida 32206.

4. This Trust and Plan and the Fund created hereby shall survive any affiliation or merger by the Union and its affiliated Locals with any other Labor organization.

5. No eligible employee shall have any right, interest or title to the Fund or any part thereof except to the extent that such employee is entitled to benefits provided by the Trustees hereunder. The monies paid or to be paid into said Fund shall not be liable for or subject to the debts, contracts or liabilities of the employer collective bargaining associations, the employers, employees, beneficiaries or the Union or its affiliated Locals.

6. In the event an eligible employee is entitled to receive monies from this Fund and passes away prior to receipt thereof, such monies owed shall be paid to the designated beneficiary under the local employer-ILA Welfare Plan. If there is no designated beneficiary, then payment shall be made to the estate of such deceased employee.

7. The Board shall amend this Trust and Plan upon the joint written direction of the Employers and the ILA provided such amendment is not contrary to ERISA or any other applicable law.

Appendix A

8. The Agreement and Declaration of Trust and Plan is contingent upon and subject to obtaining and retaining of such approval of the Commissioner of Internal Revenue as may be necessary to establish the Plan as a qualified plan qualifying for exemptions from taxation under Section 501(c) (9) of the 1954 Internal Revenue Code or any other applicable Section of the Federal Tax Laws as such Sections are now in effect or are hereinafter amended or adopted.

The Agreement and Declaration of Trust and Plan is contingent upon and subject to obtaining such approval of the United States Department of Labor as may be required under the applicable provisions of ERISA which may be amended from time to time, and regulations issued pursuant thereto.

9. This Agreement shall also cover deep-sea ILA container repair and maintenance personnel on the same basis as for longshoremen, clerks and checkers, provided the repair and maintenance employers sign subscription agreements with the ILA and the Trustees agreeing to abide by the terms and conditions hereof and to make the required contributions hereto.

ARTICLE VIII

Appeal Procedure

1. (a) In the event an application for a benefit pursuant to the provisions of this Trust and Plan is denied, the applicant shall be notified in writing of the denial, certified mail, return receipt requested, which notice shall set forth the reason(s) for denial and the provision(s) of the Plan or interpretation or rules thereof adopted by the

Appendix A

Trustees. The applicant shall have sixty (60) days from the date of receipt of notification to file an appeal with the Board of Trustees. Such appeal shall be in writing setting forth the reasons for the appeal and shall be mailed to the Board certified mail, return receipt requested or may be delivered personally to the Plan Office. If the applicant fails to file a notice of appeal within the time provided, he shall be deemed to have waived his right to appeal and the decision of the Board shall thereupon become final and binding.

(b) In the event an applicant files an appeal with the Board, it shall advise the applicant of its determination on the appeal no later than sixty (60) days after receipt of the appeal of such determination by certified mail, return receipt requested; provided, however, the sixty (60) day period may be extended to not more than one-hundred and twenty (120) days in the event a hearing, as hereinafter provided, is requested. Such decision shall be final and binding.

(c) Applicants may, if they wish, appear before the Board personally, or at the Board's discretion before the Committee or Sub-Committee of the Board, with or without a duly authorized representative, or by a duly authorized representative of the applicant's choosing, concerning the appeal, and they shall be so notified in writing at least one week before any such appearance. In the event the applicant does not appear, the Board, Committee or Sub-Committee shall proceed on the appeal as if such employee were present. Decisions of the Board made pursuant to this Section 1(c) shall be final and binding. Decisions made by the Committee or Sub-Committee made pursuant to this

Appendix A

Section 1(c) shall be submitted to the Board for ratification and upon ratification shall be final and binding.

2. The Board of Trustees may prescribe any additional and further procedures that may be necessary to implement and administer the above set forth.

Article IX

Term of Trust and Termination

This agreement and Declaration of Trust and Plan and the Trust created hereby shall continue until the 30th day of September, 1983, or such subsequent date as may be established by any collective bargaining agreement between the South Atlantic Employers Negotiating Committee and the ILA, which collective bargaining agreement provides for contributions to this Fund. Upon termination, the Trustees, however, shall continue thereafter to perform and carry out the provisions of the Trust, to receive such contributions as may be made to them, and to administer the Vacation & Holiday Fund and Plan until the disbursements of all monies shall have been completed and all obligations under the Agreement and under the Trust shall have been fulfilled.

Upon termination or liquidation of the Trust and the fulfillment of the purposes specified in Article III of this Agreement, the Trustees shall turn over any surplus monies in the Fund, any real or personal property belonging to the Trust, and such other assets, remaining in said Trust to any future Trust Fund that may be created by and between the parties prior to the termination hereof. If no such Fund is created, then and in that event, the Trustees, after disposing by sale, lease or otherwise of any

Appendix A

real or personal property belonging to the Trust, shall use any surplus monies remaining in the Fund after all obligations in connection with the administration thereof have been fulfilled, to continue to provide benefits to the extent that such surplus may make such benefits available until such surplus monies are exhausted.

ARTICLE X

Counterparts

This Agreement and Declaration of Trust may be executed in a number of counterparts each of which shall have the force of an original.

IN WITNESS WHEREOF, the Trustees have executed this instrument to evidence their amendment of the Trust hereby created and their agreement to be bound hereby, and all other parties have executed this Agreement this 10th day of December, 1981.

EMPLOYER TRUSTEES	UNION TRUSTEES
/s/ G. G. WISE	/s/ LANDON L. WILLIAMS
/s/ E. G. CAWTHON	/s/ PERRY C. HARVEY, JR.
/s/ O. W. WATERS	/s/ WILLIE E. SLOAN
/s/ KARL WETTSTEIN	/s/ JOHN MACKEY
/s/ A. FERNANDO TORRES	/s/ BENJAMIN FLOWERS
/s/ JAMES J. HAYES	/s/ RICHARD MCPHERSON
EMPLOYER ALTERNATES	UNION ALTERNATES
/s/ S. FOX	/s/ FRANK C. RYAN
/s/ CRAIG A. FRANCIS	/s/ C. H. ROGERS

Appendix A

For and on behalf of the SOUTH ATLANTIC EMPLOYERS NEGOTIATING COMMITTEE	For the INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO
/s/ JAMES NEWSOME, JR.	/s/ LANDON L. WILLIAMS
/s/ VERNON MCDANIEL	/s/ PERRY C. HARVEY, JR.
/s/ O. W. WATERS	/s/ WILLIE E. SLOAN
/s/ HILTON PATE	/s/ JOHN MACKEY
/s/ JAMES P. LAMB	/s/ BENJAMIN FLOWERS
	/s/ RICHARD MCPHERSON

APPENDIX B

GARNISHMENT CASES FILED AGAINST SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND IN 1984

Lanier Collection Agency and Service, Inc. v. *Carlton Anderson*, No. 376-808 (Municipal Court of Savannah, Ga., filed November 15, 1984).

ILA Local 1414 Federal Credit Union v. *Allen Boney, Jr.*, No. 382-477 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Levy's, Inc. v. *Allen Boney, Jr.*, No. 380-362 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Leroy Boles*, No. 059-470 (Municipal Court of Savannah, Ga., filed November 9, 1984).

United Adjustment Agency of Savannah, Inc. v. *George Brown*, No. 377-862 (Municipal Court of Savannah, Ga., filed November 9, 1984).

ILA Local 1414 Federal Credit Union v. *Mack Brunson*, No. 382-481 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Robert Brantley*, No. 059-849 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Nathaniel Cook*, No. 061-027 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Eugene A. Davis*, No. 062-744 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Roosevelt Eady*, No. 81-5082 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Carlton E. Floyd*, No. 376-159 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Edgar Fripp*, No. 057-225 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Edgar Fripp*, No. 379-689 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Theodore Fripp*, No. 382-271 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Albert Hall*, No. 054-921 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Porter J. Hilton*, No. 330-927 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Porter J. Hilton*, No. 79-6325 (State Court of Chatham County, Ga., filed November 2, 1984).

Allied Collection Technicians, Inc. v. *Porter J. Hilton*, No. 059-886 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Lee Housey, Jr.*, No. 382-286 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Appendix B

United Adjustment Agency of Savannah, Inc. v. *Lee Housey, Jr.*, No. 363-098 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Cecil Jenkins*, No. 382-642 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Richard Jackson*, No. 057-070 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Sanders Johnson, Jr.*, No. 382-306 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Johnny L. Kinlaw*, No. 78-2299 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *John* H. *Lewis*, No. 81-6391 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Willie L. Lewis*, No. 336-012 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Robert L. Lovett*, No. 367-768 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Ronald Lovett*, No. 060-158 (Municipal Court of Savannah, Ga., filed November 9, 1984).

St. Joseph's Hospital, Inc. (UAA) v. *William Milton, Jr.*, No. 337-630 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Thomas J. McMillar*, No. 81-3406 (State Court of Chatham County, Ga., filed November 13, 1984).

Savannah Electric & Power Co. v. *Thomas J. McMillar*, No. 058-694 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Marian S. McPherson*, No. 79-4231 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Marian S. McPherson*, No. 382-34 (Municipal Court of Savannah, Ga., filed November 5, 1984).

ILA Local 1414 Federal Credit Union v. *Leon Parrish*, No. 382-483 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *John Polite*, No. 82-1585 (State Court of Chatham County, Ga., filed November 2, 1984).

City of Savannah (CBI/LCA) v. *Oscar W. Robinson*, No. 82-4893 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *David Scarvar*, No. 382-337 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Leroy Simpson*, No. 84-3479 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Esau Staley III*, No. 376-942 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *James W. Stewart*, No. 060-392 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Charles Stevens*, No. 83-5049 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Earl S. White, Sr.*, No. 056-007 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Jeff Williams*, No. 319-660 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Edward Wright, Jr.*, No. 81-5148 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Melvin Cutter*, No. 83-3855 (State Court of Chatham County, Ga., filed November 2, 1984).

Geo. Summerelle t/a Summerelle Tire (UAA) v. *Woodrow Hill, Jr.*, No. 355-771 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Allied Collection Technicians, Inc. v. *Woodrow Hill, Jr.*, No. 377-387 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Woodrow Hill, Jr.*, No. 379-274 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *James E. Jackson*, No. 382-302 (Municipal Court of Savannah, Ga., filed November 29, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Herbert Haygood*, No. 060-250 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Leavon Shuman*, No. 377-434 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Riveria Apts. (LCA) v. *Leavon Shuman*, No. 376-890 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Leavon Shuman*, No. 057-969 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Leavon Shuman*, No. 79-2239 (State Court of Chatham County, Ga., filed November 14, 1984).

Lanier Collection Agency and Service, Inc. v. *Charles Reynolds*, No. 061-682 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Fred Lark, Jr.*, No. 382-318 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Allied Collection Technicians, Inc. v. *Melvin Ford*, No. 061-912 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Melvin Ford*, No. 060-934 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Therman Howard*, No. 062-305 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Allen Milton,* No. 82-1578 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Cash Sanders,* No. 80-3860 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Isaac Bradley,* No. 062-467 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *L. Hammett,* No. 361-490 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *L. Hammett,* No. 81-389 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Jesse Frazier,* No. 381-366 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Clifford Kemp,* No. 84-2164 (State Court of Chatham County, Ga., filed November 2, 1984).

Associates Financial Services v. *Ezekiel Boatwright,* No. 83-4195 (State Court of Chatham County, Ga., filed November 21, 1984).

Lanier Collection Agency and Service, Inc. v. *Stephen Aiken,* No. 060-347 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Willie J. Haywood,* No. 054-946 (Municipal Court of Savannah, Ga., filed November 9, 1984).

ILA Local 1414 Federal Credit Union v. *Willie J. Haywood,* No. 382-473 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Dr. Bradford A. Durham, DMD v. *Jonathan Brown,* No. 381-914 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Bobby Locke,* No. 062-029 (Municipal Court of Savannah, Ga., filed November 9, 1984).

ILA Local 1414 Federal Credit Union v. *Bobby Locke,* No. 382-480 (Municipal Court of Savannah, Ga., filed November 15, 1984).

ILA Local 1414 Federal Credit Union v. *Harvey Thomas,* No. 382-482 (Municipal Court of Savannah, Ga., filed November 15, 1984).

United Adjustment Agency of Savannah, Inc. v. *Charles Lang,* No. 340-117 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Allied Collection Technicians, Inc. v. *John P. Leffett,* No. 4189 (State Court of Chatham County, Ga., filed November 6, 1984).

Lanier Collection Agency and Service, Inc. v. *Moses Jackson,* No. 382-303 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Gregory Sams,* No. 378-086 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Dr. Bradford A. Durham, DMD v. *William Burke, Jr.*, No. 381-916 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Robert Moore*, No. 382-327 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Robert Moore*, No. 365-080 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Leroy Harris*, No. 054-759 (Municipal Court of Savannah, Ga., filed November 9, 1984).

ILA Local 1414 Federal Credit Union v. *John W. Bailey, Jr.*, No. 382-474 (Municipal Court of Savannah, Ga., filed November 15, 1984).

ILA Local 1414 Federal Credit Union v. *Hayward Lee Frazier*, No. 382-479 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Harry Roper*, No. 056-454 (Municipal Court of Savannah, Ga., filed November 9, 1984).

ILA Local 1414 Federal Credit Union v. *Willie Ealey*, No. 382-478 (Municipal Court of Savannah, Ga., filed November 15, 1984).

United Adjustment Agency of Savannah, Inc. v. *Charles H. Polite*, No. 059-728 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Willie Mars*, No. 382-322 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Appendix B

Allied Collection Technicians, Inc. v. *Marion T. Mathis*, No. 83-4238 (State Court of Chatham County, Ga., filed November 6, 1984).

Lanier Collection Agency and Service, Inc. v. *Marion T. Mathis*, No. 83-4620 (State Court of Chatham County, Ga., filed November 14, 1984).

Lanier Collection Agency and Service, Inc. v. *Rosby Davis*, No. 062-020 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Eddie Sanders*, No. 79-5701 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v. *Frank Ancrum*, No. 059-852 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Allied Collection Technicians, Inc. v. *Howard L. Reid*, No. 380-723 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Commercial Credit Corp. v. *Charles Lee*, No. 81-1228 (State Court of Chatham County, Ga., filed November 21, 1984).

Lanier Collection Agency and Service, Inc. v. *Henry Sheppard*, No. 055-439 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Henry Sheppard*, No. 368-520 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Melvin Watts*, No. 062-490 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Melvin Watts*, No. 337-684 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Bobbie Christie*, No. 061-287 (Municipal Court of Savannah, Ga., filed November 9, 1984).

United Adjustment Agency of Savannah, Inc. v. *Nathaniel Young*, No. 062-086 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Financial One of Georgia v. *Reese Saulter*, No. 83-3508 (State Court of Chatham County, Ga., filed November 21, 1984).

Lanier Collection Agency and Service, Inc. v. *Reese Saulter*, No. 370-808 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v. *Lester Williams*, No. 062-288 (Municipal Court of Savannah, Ga., filed November 15, 1984).

Lanier Collection Agency and Service, Inc. v. *Lester Williams*, No. 376-478 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v.*Robbie Siebert*, No. 80-393 (State Court of Chatham County, Ga., filed November 2, 1984).

Lanier Collection Agency and Service, Inc. v.*Robbie Siebert*, No. 061-684 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Appendix B

Lanier Collection Agency and Service, Inc. v. *Claudine L. Thompson*, No. 061-121 (Municipal Court of Savannah, Ga., filed November 9, 1984).

Lanier Collection Agency and Service, Inc. v *Arthur Oliver*, No. 060-383 (Municipal Court of Savannah, Ga., filed November 15, 1984).

REPLY

BRIEF

No. 86-1387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONERS' REPLY BRIEF

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

Counsel for Petitioners

Of Counsel:

ERNEST L. MATHEWS, JR.
KEVIN MARRINAN

TABLE OF CONTENTS

Table of Authorities

Cases: PAGE

PAGE

Statutes:

No. 86-1387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOANE, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., and A. FERNANDO TORRES, as trustees of the SOUTH ATLANTIC ILA/EMPLOYERS VACATION AND HOLIDAY FUND,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONERS' REPLY BRIEF

I

Because the Preemptive Intent of Congress Is Clearly Set Forth in ERISA Section 514(a) and Has Been Definitively Expounded by This Court, Resort to Collateral Sources Is Impermissible.

Whether or not the Georgia garnishment statute, Official Code of Georgia Annotated ("OCGA") § 18-4-20, as applied to the petitioners' welfare fund is preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq.*, depends upon the intent of Congress. *Pilot Life Insurance Company* v. *Dedeaux*, —— U.S. ——, 107 S.Ct. 1549, 1552 (1987). The Brief of Amicus Curiae in Support of the Judgment Below ("Brief in Support" or "BIS"), like the children searching for the bluebird of happiness, looks for that intent everywhere but in the right place.

ERISA has an express preemption section in which the will of Congress is unambiguously set forth. ERISA § 514 (a), 29 U.S.C. § 1144(a). But, rather than seeking the legislative purpose in the words of that section or in its clear legislative history, the Brief in Support ranges far and wide in a valiant effort to find some intent other than what Congress has expressly articulated. The Brief in Support attempts to find the scope of ERISA preemption in the Internal Revenue Code, BIS at 13, the Consumer Credit Protection Act, BIS at 6, 17, the Labor Management Relations Act, BIS at 24, Department of Labor Regulations, BIS at 15, Treasury Regulations, BIS at 18, 30, Revenue Rulings, BIS at 13, 30, and in §§ 206, 403, 502 of ERISA, BIS at 5, 7, 10, 12, 13, 14, 23, 26—anywhere but where *Congress* has expressed it, in § 514(a). Only at its very end does the Brief in Support come to grips with the one pertinent section of ERISA, its express preemption clause.

The reluctance of the Brief in Support to confront the articulated will of Congress is understandable. The broad and sweeping preemption of ERISA § 514(a) is clear and unambiguous. *All* state laws relating to ERISA plans are preempted. Nor is the meaning of the phrase "relate to" a mystery. It has been explicated both by the legislative history and by repeated pronouncements of this Court.[1] "Relate to" is to be given its broad, common-sense meaning, so that a state law relates to an ERISA plan if it has a connection with or reference to such a plan, or if it affects such a plan, regardless of whether the law conflicts with the purposes or terms of ERISA[2] and regardless of

[1] *Fort Halifax Packing Co., Inc.* v. *Coyne*, —— U.S. ——, 107 S.Ct. 2211 (1987); *Pilot Life Ins. Co.* v. *Dedeaux*, —— U.S. ——, 107 S.Ct. 1549 (1987); *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724 (1985); *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983); *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

[2] *Fort Halifax*, 107 S.Ct. at 2215; *Pilot Life*, 107 S.Ct. at 1552-55; *Metropolitan Life*, 471 U.S. at 738-39; *Shaw*, 463 U.S. at 97-98; *Alessi*, 451 U.S. at 522-24.

whether it purports to directly regulate an ERISA plan.[3] Only where the effect upon the plan is too remote, tenuous or peripheral would the state law not "relate to" the plan.[4]

Where, as here, the intent of Congress has been unambiguously expressed and the meaning of the statutory language has been repeatedly explicated by this Court, there is no warrant to look elsewhere. The entire thrust of the Brief in Support violates basic canons of statutory interpretation. In determining the scope of a statute, a court looks first to its language. If the statutory language is unambiguous, in the absence of a clearly expressed legislative intent to the contrary, that language must be regarded as conclusive. *United States* v. *Clark*, 454 U.S.

[3] *Alessi*, 451 U.S. at 525; *Shaw*, 463 U.S. at 98. Those courts which have held that ERISA does not preempt state garnishment proceedings have relied upon the dissenting opinion in *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 679 F.2d 1307 (9th Cir. 1982), *vacated*, 463 U.S. 1 (1983), as does the Brief of the State of California as Amicus Curiae in this case at pp. 5-10. *See St. Paul Fire & Marine Ins. Co.* v. *Cox*, 752 F.2d 550, 552 n.3 (11th Cir. 1985); *Local Union 212, IBEW Vacation Trust Fund* v. *Local 212 IBEW Credit Union*, 735 F.2d 1010 (6th Cir. 1984) (per curiam), *aff'g*, 549 F. Supp. 1299, 1302 (S.D. Ohio 1982); *Electrical Workers, Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154, 159 (Mo. 1979); *First Nat'l Bank of Commerce* v. *Latiker*, 432 So.2d 293, 296 (La. Ct. App. 1983). That theory would limit the "relate to" phrase to state laws that actually regulate ERISA funds. 679 F.2d at 1311-12. The *Franchise Tax Board* dissent, somewhat torturedly, found that Congress had slipped the notion of "regulate" into § 514(c)(2), when it defined a state as including "a State, any political subdivision thereof, or any agency or instrumentality of either which purports to *regulate, directly or indirectly*, the terms and conditions of employee benefit plans . . . ". 679 F.2d at 1312 (emphasis in the original opinion). The idea that Congress would bury the definitive concept of the preemption analysis in a subsidiary definitional section rather than expressing it in the preemption language itself is, to say the least, rather odd. More important, it is in direct conflict with every pronouncement of this Court, which has held that "relates to" is not limited to laws that regulate ERISA funds. As the Court has noted, Congress rejected the very approach suggested by the dissent. *Shaw*, 463 U.S. at 98-99. Congress, too, has rejected the dissent and approved the majority decision in *Franchise Tax Board*. H.R. Rep. 98-655, 98th Cong., 1st Sess. Pt. 1, at 42 (1984).

[4] *Shaw*, 463 U.S. at 100, n.10; *Alessi*, 451 U.S. at 522.

555, 560 (1982); *United States* v. *Turkette,* 452 U.S. 576, 580 (1981). Unless exceptional circumstances, not present in this case, dictate otherwise, judicial inquiry is complete when the Court finds that the terms of a statute are plain and unambiguous. *Howe* v. *Smith,* 452 U.S. 473, 483 (1981); *Rubin* v. *United States,* 449 U.S. 424, 430 (1981). There is no reason to look to legislative history as a guide to its meaning. *Tennessee Valley Auth.* v. *Hill,* 437 U.S. 153, 184 n.29 (1978).

Where the plain language is supported by consistent judicial interpretation, it is not necessary to look beyond the words of the statute. *Maine* v. *Thiboutot,* 448 U.S. 1, 6 n.4 (1980). Here, the phrase "relate to" has been consistently interpreted in five Supreme Court decisions. Therefore, going beyond the language of § 514(a) is both unnecessary and impermissible.

Even if the meaning of § 514(a) was uncertain, that would not grant a license to wander into alien fields in search of a congenial congressional purpose. Rather, one would have to look for its meaning to the legislative history of § 514(a) itself. That legislative history, to which this Court has turned in construing § 514(a), underscores and confirms the plain language of the section and the pronouncements of the Court.

The inquiry in this case, then, is not to ascertain the intent of Congress in ERISA § 514(a). That is already known. Rather, the task is to take the well-established test for preemption—does the state law have reference to or connection with or an effect that is not tenuous or remote upon an ERISA plan—and apply that test to the challenged state statute.

To the extent that the Brief in Support attempts to look elsewhere to create a congressional intent other than that expressed in § 514(a) no response is required. The exercise is futile and self-defeating.[5] This reply, then, will

[5] The argument that ERISA's only purpose with respect to welfare, as opposed to pension, plans was to protect against trustee

(footnote continued on following page)

confine itself to the arguments the Brief in Support makes with respect to ERISA's express preemption section.

II

State Garnishment Laws Relate to ERISA Plans and Are Preempted.

Even when the Brief in Support at last confronts ERISA § 514(a), BIS at 20, it continues to do so indirectly.[6] Only at the last moment does it purport to apply the test enunciated by Congress and this Court. The Brief in Support makes four arguments with respect to the question of whether the Georgia statute relates to an ERISA plan, only the last of which directly addresses the sole issue in

(footnote continued from previous page)

abuses, BIS at 14-15, is a prime example of the Brief in Support's fallacious approach. Whatever merit the argument may have with respect to other sections of ERISA, it is simply out of place when made with respect to the express preemption section itself. Section 514(a) unquestionably covers both pension and welfare plans, and the breadth of its preemptive reach, "all State laws relating to" ERISA plans, manifestly covers a broader range of state laws than those related to trustee abuses. Indeed, four of the five preemption cases previously decided by this Court involved welfare plans, *Shaw*, *Metropolitan Life*, *Fort Halifax* and *Pilot Life*. In only one of these, *Pilot Life*, could there be said to be even a remote connection with trustee misconduct. Moreover, other sections of ERISA indicate that Congress' concern with welfare plans was not limited to protection from trustee abuses. For instance, the section enabling trustees to sue employers for delinquent contributions, with considerable litigation advantages, applies equally to welfare plan trustees. 29 U.S.C. §§ 1132, 1145. *See also NYSA-ILA Medical and Clinical Serv. Fund* v. *Carco,* 607 F. Supp. 1217 (D.N.J. 1985). The attempt, then, to ascribe a limited intent to Congress is at best a half truth and, more important, is irrelevant in light of the fact that Congress expressly made the entire sweeping preemption provision apply to welfare as well as pension plans.

[6] The very heading of Point II of the Brief in Support betrays the fatal weakness in its case. It argues that § 514(a) must be read not to preempt state garnishment laws "*since* Congress did not intend to protect beneficiaries of welfare plans from creditors." BIS at 20 (emphasis supplied). The argument against preemption, then, is based upon the premise of a congressional "intent" which the Brief in Support attempts to construct from various sources other than ERISA's preemption section itself. Unless the foundation is secure, the entire argument falls. And the foundation is sand, because the intent of Congress must be determined, not from collateral sources, but from § 514(a) itself, its language and history.

this case—the nature and extent of the effect upon the plan. None of the arguments raised overcomes the obvious fact that state garnishment laws do relate to ERISA plans.

1. *The Substantive/Procedural Distinction Is Specious.*

The Brief in Support first seeks an exemption from the preemptive sweep of § 514(a) for all "generally applicable rules of State procedure." BIS at 22-24.[7] The proposed distinction between state procedure and state substantive laws would seem to be novel, if not idiosyncratic.

No case is cited espousing the theory, and it would seem that no decision holding that ERISA does not preempt has done so on the ground that only state procedure was involved.[8] Moreover, as the Brief in Support asserts, it is impermissible to adopt an interpretation of one section of an act that would render another section redundant. BIS at 25-26. Yet the substantive/procedural dichotomy urged here would render superfluous the 1984 amendments of ERISA § 514 and § 206, 29 U.S.C. §§ 1144, 1056, wherein Congress expressly excepted from ERISA's preemptive reach qualified domestic relation orders. Since these, no less than garnishment, are generally applicable rules of

[7] It would seem that the Brief in Support is on rather shaky ground in its assumption that state garnishment laws are procedural rather than substantive. Garnishment is a creature of statute, unknown at common law. 38 C.J.S. Garnishment § 1(b). Its effect is to create a right in the judgment creditor against third persons in possession of property of the judgment debtor. 38 C.J.S. Garnishment § 172. In general, garnishment statutes create personal liability in the garnishee, if he fails to comply. 38 C.J.S. Garnishment § 224. The garnishment gives rise to a whole new proceeding in which the parties are different from those in the underlying judgment and which has its own procedures, including discovery. 38 C.J.S. Garnishment §§ 191, 213; OCGA §§ 18-4-62; 18-4-82; 18-4-83; 18-4-84; 18-4-85; 18-4-89; 18-4-93. Since a law that creates, destroys, or alters duties, rights, obligations, and liabilities is substantive, *Bagsarian* v. *Parker Metal Co.*, 282 F. Supp. 766, 769 (N.D. Ohio 1968); *Smith* v. *Putnam*, 250 F. Supp. 1017, 1018 (D. Colo. 1965), it is appropriate to characterize state garnishment statutes as substantive.

[8] *See e.g., American Tele. and Tel. Co.* v. *Merry*, 592 F.2d 118 (2d Cir. 1978); *Gould* v. *P.B.G.C.*, 589 F. Supp. 164 (S.D.N.Y. 1984). *See also* cases cited in the Brief for the United States as Amicus Curiae at 13, n.9, and cases cited *supra* at n.3.

state procedure, the amendments would be unnecessary if only state substantive law was preempted.

More importantly, Congress itself made no exception for state procedures in the definitional portions of § 514. On the contrary, ERISA § 514(c), defines state law broadly to include "all laws, decisions, rules, regulations or other State action having the force of law." 29 U.S.C. § 1144(c). The use of the word "rule", which generally describes procedural law, *see e.g.*, "Federal Rules of Civil Procedure", indicates that state procedures were within the contemplation of § 514(c). Manifestly, state procedural rules have "the effect of law." It would border on sophistry to claim that the Georgia Code, of which OCGA § 28-4-20 is a part, is not a state law.

The Brief in Support attempts to find credence for its "procedural" exemption in the fact that Congress preserved concurrent jurisdiction in the state courts over certain ERISA actions, and so "necessarily" preserved state procedures. BIS at 23. From this it is argued that the state procedures do not "relate to" an ERISA plan. BIS at 24. The opposite is true. The state procedures when applied to ERISA plans manifestly do relate to them. The procedures are indeed preempted. However, federal courts borrow state enforcement procedures. Fed. R. Civ. P. 69(a). To the extent they are necessary to effectuate the federal procedure, the state procedures would be saved from preemption by ERISA § 514(d), 29 U.S.C. § 1144(d), just as that part of the New York Human Rights Law which provided a means of enforcing Title VII of the Federal Civil Rights Act of 1964 was preserved in *Shaw*, 463 U.S. at 85.

2. *All State Procedures in Aid of Execution Would Not Be Voided.*

The Brief in Support argues that, if one construed § 514(a) to preempt garnishment in this case, all procedures in aid of execution of judgments against ERISA plans would also fall—a result Congress could not have intended. BIS at 24-25. The quarrel here is not with petitioners' interpretation of § 514(a), but with Congress. Con-

gress has elected to preempt all state laws relating to ERISA plans. Were this but a litigant's interpretation, the *reductio ad absurdum* technique might have some validity. But the meaning and intent of § 514(a) are well fixed. No amount of cavilling about the results can change what Congress has decreed in the statute. *Cf. St. Martin Evangelical Lutheran Church* v. *South Dakota*, 451 U.S. 772, 790-91 (1981) (Stevens, J. concurring).

Moreover, the Brief in Support overstates the problem. Not all state procedures in aid of judgments are necessarily voided. As mentioned above, those procedures when employed in ERISA actions would be revived by the doctrine enunciated in *Shaw*. Similarly, state procedures in actions arising out of the necessary administration of a plan—such as litigation in connection with a plan's renting of space, purchasing of equipment, hiring of employees, and engaging of attorneys or accountants—might also be saved. This activity is expressly contemplated and mandated by ERISA, *see* 29 U.S.C. § 1104, and so might be preserved under the *Shaw* analysis or, if it were not specifically directed to the operation of the plan and had no more effect than to maintain or restore the *status quo* of plan administration, these procedures could be considered too tenuous or remote to qualify as "relating to" the plan within the meaning of § 514(a).

3. *Other Sections of the Act Are Not Rendered Superfluous.*

The argument that a reading of § 514 to preempt state garnishment laws would render ERISA § 206(d) superfluous, BIS at 25-27, is not well taken. Section 206(d) by its terms applies to *voluntary* alienation of pension benefits. It is only through judicial gloss that this section has been extended to prevent involuntary alienation. *See, e.g., Local Union 212, IBEW Vacation Trust Fund* v. *Local 212 IBEW Credit Union*, 735 F.2d 1010 (6th Cir. 1984), *aff'g*, 549 F. Supp. 1299 (S.D. Ohio 1982); *General Motors Corp.* v. *Buha*, 623 F.2d 455 (6th Cir. 1980). The evident focus of the congressional concern, however, was to prevent fund beneficiaries from voluntarily disposing of their pension benefits. Section 206(d) continues to perform that function with respect to voluntary alienation of pension benefits, while § 514(a) prevents involuntary alienation of both pension and welfare benefits. It is not necessary, then, to do violence to the plain meaning of 514(a) in order to save § 206(d) from redundancy.

4. *State Garnishment Laws Have a Real and Serious Effect on ERISA Plans.*

When the Brief in Support finally arrives at the real issue in the case, the effect or burden placed upon ERISA plans by state garnishment laws, its approach is to dismiss those effects as hardly more than the ordinary functions of plan officials. BIS at 27-30. The Brief in Support addresses only half the question and, as to that, it is wrong.

As the briefs of petitioners and the United States point out, state garnishment laws affect or have a connection with ERISA plans not only by placing burdens upon them but also by becoming embroiled in the workings of the plan. Garnishment orders would have an effect of the most important kind, for they go to the payment of benefits—the thing that plans are all about—and change both the express terms of the plan and the duties imposed on fiduciaries by Congress. Brief for the United States as Amicus Curiae at 10-12; Petitioners' Brief at 15-16; ERISA § 403, 29 U.S.C. § 1103. The Brief in Support simply overlooks this intimate connection, which would suffice to make the garnishment "relate to" the plan, even if practical consequences of the involvement were not great.

But, notwithstanding amicus' attempt to minimize, the practical effects are in fact great. The Brief in Support can, in theory, trivialize the effort required by a single garnishment proceeding. If only a handful of garnishments were expected to beset a plan, there might even be some merit to the argument. But this case illustrates its fallacy. Not a handful but 23 separate garnishments are involved here. Petitioners' Brief at 7. And in the year 1984 there were 109 garnishments in Georgia alone. Appendix B to Petitioners' Brief. Each of these required not merely calculations but a court appearance, which in turn required the engagement of an attorney. This not only necessitated

the use of plan assets for extraordinary administration expenses, but also added to the difficulty of Plan Administration, which, as Congress has recognized, may prompt employers to cut benefits in derogation of the purpose of ERISA. *Fort Halifax,* 107 S.Ct. at 2217. The sheer volume of potential garnishment proceedings makes them a substantial burden on the plans.[9]

As the United States has pointed out, being subjected to garnishment has already been found by Congress to be burdensome enough that it may induce employers to fire employees and so has prompted remedial legislation in the Consumers Credit Protection Act § 304(a), 15 U.S.C. § 1674 (a). *See* Brief for the United States as Amicus Curiae at 14, n.10.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Petitioners' Brief and in the Brief of the United States as Amicus Curiae, this Court should hold that all state garnishment laws applied to plans governed by ERISA are preempted. The judgment of the Supreme Court of Georgia should be reversed.

Dated: January 8, 1988

Respectfully submitted,

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York, New York 10004
(212) 425-3240

Attorney for Petitioners

Of Counsel:

ERNEST L. MATHEWS, JR.
KEVIN MARRINAN

[9] Amicus' argument that Congress has permitted "more intrusive" burdens to be placed upon ERISA plans is unavailing. All of the examples cited in the Brief in Support, BIS at 30—garnishment for domestic relations orders, Federal tax levies, the obligation to respond to employment discrimination proceedings, and the obligation to comply with state insurance laws—are *express* exceptions to ERISA's preemption section. *See* ERISA § 514(b) and (d), 29 U.S.C. § 1144(b) and (d).

AMICUS CURIAE

BRIEF

No. 86-1387

In the Supreme Court of the United States

OCTOBER TERM, 1987

JOHN H. MACKEY, ET AL., PETITIONERS

v.

LANIER COLLECTION AGENCY & SERVICE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

CHARLES FRIED
Solicitor General

DONALD B. AYER
Deputy Solicitor General

CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

GEORGE R. SALEM
Solicitor of Labor

ALLEN H. FELDMAN
Associate Solicitor

CAROL A. DE DEO
Deputy Associate Solicitor

BETTE J. BRIGGS
Attorney
Department of Labor
Washington, D.C. 20210

QUESTION PRESENTED

Whether Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a), preempts state laws insofar as they permit judgment creditors to garnish employee benefit plans covered by ERISA to satisfy debts of plan participants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases – Continued: Page

Cases – Continued: Page

Statutes and regulations:

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-1387

JOHN H. MACKEY, ET AL., PETITIONERS

v.

LANIER COLLECTION AGENCY & SERVICE, INC.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

Respondent is a collection agency that seeks to recover judgments against 23 longshore workers by garnishing, pursuant to state-law procedures, the employees' interests in a vacation benefits plan governed by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. (& Supp. III) 1001 *et seq.* Petitioners, the trustees of the plan, object to the garnishment, in part because the agreement establishing the trust prohibits payments to creditors of beneficiaries of the plan. The Secretary of Labor is charged with enforcing the fiduciary obligations that ERISA imposes on the trustees of employee benefit plans, which include the duty to expend funds only to provide benefits or to pay reasonable administrative expenses, and he therefore has a substantial interest in the resolution of this case. Moreover, the decision of the Georgia Supreme Court in this case is inconsistent with opinion letters issued by the United States Department of Labor concluding that ERISA's preemption provision bars creditors from levying upon the assets of employee benefit plans.

The United States previously filed a brief in this case at the Court's invitation urging that certiorari be granted to reverse the decision of the Georgia Supreme Court.

STATEMENT

1. Petitioners are the trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund ("the Fund"), which provides vacation and holiday benefits to longshore workers and other employees of several southeastern stevedoring companies (Pet. App. A6, A19). The Fund is an employee welfare benefit plan as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(1).[1] Employees' qualifications for participation in the Fund and their entitlement to benefits are determined annually (Pet. App. 21).

The Fund is a multiemployer plan covering some 5,000 employees who work at 13 ports in the states of Florida, Georgia, North Carolina, and South Carolina (1984 Form 5500 at 2; Trust Agreement at 1).[2] It is administered by a

[1] ERISA governs welfare benefit plans as well as pension benefit plans. Section 3(1) (emphasis added) defines employee welfare benefit plan to include those providing "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or *vacation benefits*."

[2] A "Form 5500" is the annual report filed by the Fund with the Department of Labor as required by 29 U.S.C. 1023-1024. These reports are public documents that are available for inspection in the public document room of the Department of Labor pursuant to 29 U.S.C. 1026. The "Trust Agreement" is the Agreement and Declaration of Trust and Plan of the South Atlantic ILA/Employers Vacation and Holiday Fund, the organizing and operational document of the Fund; it was submitted to the Internal Revenue Service in support of the Fund's application for tax exempt status under 26 U.S.C. 501(a), and is open to public inspection pursuant to 26 U.S.C. 6104(a)(1)(A). We have lodged copies of the Fund's 1984 Form 5500 and the Trust Agreement with the Clerk of this Court and served them upon counsel for petitioners and respondent.

board of trustees, composed of six employer-appointed members and six union-appointed members (Trust Agreement at 11-12). The Fund is a type of forced savings plan, or spendthrift trust, designed to insure that the employee participants do not dissipate the vacation benefits they are eligible to receive through the Fund until they actually receive each year's lump sum payment. To that end, the Trust Agreement expressly provides that the "Fund shall not be liable for or subject to the debts, contracts or liabilities of the * * * employees [or] beneficiaries" (*id.* at 19).

Respondent, Lanier Collection Agency & Service, Inc., obtained money judgments against 23 employee-beneficiaries of the Fund. The collection agency then instituted garnishment proceedings in the State Court of Chatham County pursuant to Ga. Code Ann. § 18-4-60 (1982), seeking to garnish the employees' Fund entitlements.[3] The Fund's trustees maintained that the Fund is exempt from garnishment by Ga. Code Ann. § 18-4-22.1 (1982), which provides that "[f]unds or benefits of a pension, retirement, or employee benefit plan or program subject to [ERISA] shall not be subject to the process of garnishment * * * (2) unless such garnishment is based upon a judgment for alimony or for child support * * *." It is undisputed that the judgments that the collection agency seeks to enforce do not arise from such family obligations (Pet. App. A6).

[3] Section 18-4-60 provides that "[i]n all cases where a money judgment shall have been obtained in a court of this state or in a federal court sitting in this state, the plaintiff shall be entitled to the process of garnishment." Under Georgia law garnishment proceedings are governed exclusively by state statute. See Ga. Code Ann. § 18-4-60 (1982); *Grande Carpet Co.* v. *Bedco Associates No. 1*, 171 Ga. App. 33, 318 S.E.2d 767 (1984); *Diversified Mortgage Investors* v. *Georgia-Carolina Industrial Park Venture*, 463 F. Supp. 538, 539 (N.D. Ga. 1978).

2. The trial court held that the Fund is subject to garnishment (Pet. App. A11-A21). It concluded that the Georgia legislature intended, in enacting Section 18-4-22.1, "to make the Georgia law identical to the federal law" (Pet. App. A20). While stating that "[t]he federal decisions are in conflict," the court concluded that "the trend of the law seems to be that only pension funds and not vacation funds are exempt from garnishment" under ERISA (*id.* at A19). Accordingly, the trial court held that the Georgia statute does not exempt the Fund from garnishment, and ordered the trustees to pay into the court amounts owed to the collection agency by the Fund's beneficiaries (*id.* at A21).

The Georgia Court of Appeals reversed (Pet. App. A6-A10). Although the court of appeals agreed with the trial court that ERISA does not protect the Fund from garnishment (*id.* at A7-A8), it concluded that the Georgia legislature intended Section 18-4-22.1 "to protect vacation plans like the Fund from garnishment even though ERISA does not provide such protection" (Pet. App. A8). The court of appeals therefore concluded that state law exempts the Fund from garnishment (*id.* at A9).

The Supreme Court of Georgia reversed (Pet. App. A1-A5). It first agreed with the court of appeals that Section 18-4-22.1 "exempts all ERISA funds and benefits from garnishment except for alimony or child support judgments" (Pet. App. A1-A2). The court then noted that Section 206(d) of ERISA, 29 U.S.C. (& Supp. III) 1056(d), expressly prohibits alienation of *pension* benefits but does not apply to *welfare* plans (Pet. App. A2).[4] It concluded that the Georgia statute, by protecting welfare plan funds

[4] Section 206(d)(1) requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." Welfare plans are expressly excluded from coverage of the anti-alienation clause and other participation and vesting requirements by Section 201(1), 29 U.S.C. 1051(1).

from garnishment, "prohibits that which the federal statute permits and is therefore in conflict with it" (Pet. App. A4, citing *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981)). It accordingly held, relying on ERISA's express preemption provision, § 514(a), 29 U.S.C. 1144(a), which provides that ERISA "supersede[s] any and all State laws insofar as they * * * relate to any employee benefit plan," that Section 18-4-22.1 "insofar as it conflicts with ERISA is preempted by federal law" (Pet. App. A5). Thus, according to the Georgia Supreme Court, ERISA mandates that welfare benefit plans be subject to garnishment.

SUMMARY OF ARGUMENT

Section 514(a) of ERISA preempts "any and all State laws * * * [which] relate to any employee benefit plan" covered by ERISA. This Court has held repeatedly that "relate to" must be given a "common-sense meaning" such that any state law having a connection with an employee benefit plan is preempted to the extent that it affects such a plan. *Pilot Life Ins. Co.* v. *Dedeaux*, No. 85-1043 (Apr. 6, 1987), slip op. 6; *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 729 (1985); *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983).

Garnishment laws "relate to" employee benefit plans insofar as they authorize garnishment of those plans, and hence are preempted by Section 514(a). A garnishment action obviously relates to an employee benefit plan in that such actions determine who will receive payments from the plan; it is difficult to think of a more significant effect. Furthermore, Section 403(c)(1) and 404(a)(1)(A) of ERISA specifically prohibit payments of plan benefits other than to beneficiaries or for reasonable administrative purposes. Since a garnishment order directs payments to third parties, such an order conflicts with

those specific provisions of ERISA, and would be preempted even in the absence of an express preemption provision.

Garnishment laws "relate to" employee benefit plans in another way, by imposing significant burdens on plan administrators. As the Georgia garnishment statute illustrates, the trustees of a fund that is the object of a garnishment action are subject to a number of burdens as defendants in the action, even if there is no serious dispute concerning the beneficiary's indebtedness. Those burdens are multiplied in cases involving a serious legal issue, such as this case. And, as trustees of a multiemployer plan operating in four states, the plan administrators here are potentially subject to conflicting requirements if state garnishment laws are not preempted, contrary to a basic purpose underlying ERISA's broad preemption provision.

In light of the fact that garnishment proceedings determine who will receive plan benefits and impose substantial burdens on plan administrators, there can be no serious argument that the effect of garnishment on employee benefit plans is so tenuous as to avoid preemption under Section 514(a). In any event, Congress's enactment in 1984 of Section 514(b)(7), 29 U.S.C. (& Supp. III) 1144(b)(7), which authorizes garnishment of employee benefit plans to satisfy certain family obligations, makes clear that garnishment for other purposes is prohibited. That amendment to the statute would have been unnecessary if Congress did not understand that state garnishment laws are generally preempted, and the legislative history of Section 514(b)(7) confirms that Congress intends Section 514(a) generally to preempt state garnishment laws.

The Georgia Supreme Court read far too much into Section 206(d), which prohibits voluntary or involuntary alienation of pension benefits, in concluding by negative implication that that provision mandates that states subject benefit plans to coverage by garnishment statutes.

Section 206(d) simply does not govern welfare benefit plans. While it overlaps with Section 514(a) in that both sections prohibit involuntary alienation of pension benefits, Section 206(d) is not rendered superfluous under our reading of Section 514(a) since it generally prohibits voluntary alienation of pension benefits, which is not prohibited by Section 514(a).

Unlike the opinion of the Georgia Supreme Court, the language of the Georgia statute appears to reflect a correct understanding of Section 514. The statute, Ga. Code Ann. § 18-4-22.1 (1982), provides that employee benefit plans "shall not be subject to the process of garnishment" except to enforce "alimony or * * * child support" judgments. That is consistent with Section 514, since Section 514(a) preempts state garnishment laws to the extent that they authorize garnishment of employee benefit plans, except that Section 514(b)(7) permits garnishment to satisfy certain family obligations. Since the garnishment here is on behalf of general creditors rather than dependents, the result is that garnishment is not authorized by § 18-4-22.1.

ARGUMENT

SECTION 514(a) OF ERISA PREEMPTS STATE GARNISHMENT LAWS INSOFAR AS THEY AUTHORIZE GARNISHMENT OF EMPLOYEE BENEFIT PLANS OTHER THAN TO SATISFY CERTAIN FAMILY OBLIGATIONS

A. Section 514(a) Of ERISA Preempts Laws "Relat[ing] To" ERISA Plans

As previously chronicled by this Court, Congress enacted ERISA following nearly a decade of studying the operation of private employee pension and welfare benefit plans. *Central States* v. *Central Transport, Inc.*, 472 U.S. 559, 569 & n.9 (1985); *Nachman Corp.* v. *PBGC*, 446 U.S. 359, 361 (1980). Congress found that there had been enormous growth in employee benefit plans in recent years and

that "the continued well-being and security of millions of employees and their dependents are directly affected by these plans." 29 U.S.C. 1001(a). Due to the inadequacy of existing minimum standards under state law, however, Congress found that "the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered" (*ibid.*). Congress therefore established in ERISA a comprehensive regulatory framework to "assur[e] the equitable character of such plans and their financial soundness" (*ibid.*), and thereby to "protect * * * participants in employee benefit plans and their beneficiaries" (29 U.S.C. 1001(b)).

At the same time that it created in ERISA a federal scheme of regulation of employee benefits plans, Congress expressly preempted "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" (§ 514(a), 29 U.S.C. 1144(a)). Congress broadly defined "State law" to include "all laws, decisions, rules, regulations, or other State action having the effect of law" (§ 514(c), 29 U.S.C. 1144(c)). As this Court has repeatedly instructed, Section 514(a) is "deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.' " *Pilot Life Ins. Co.* v. *Dedeaux*, No. 85-1043 (Apr. 6, 1987), slip op. 4 (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. at 523). "The preemption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985). Nor, as this Court has emphasized, is preemption "limited to 'state laws specifically designed to affect employee benefit plans.' " *Pilot Life*, slip op. 6 (quoting *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983)). Rather, the phrase "relate to" must be "given its broad common-sense meaning, such that a state law 'relate[s] to' a benefit plan 'in the normal sense of the

phrase, if it has a connection with or reference to such a plan.' " *Pilot Life*, slip op. 6 (quoting *Metropolitan Life*, 471 U.S. at 739, quoting *Shaw*, 463 U.S. at 97).

As this Court explained in *Shaw* (463 U.S. at 98-100), the legislative history of ERISA confirms that Congress intended to occupy the field of employee benefit plans by superseding any and all state laws affecting such plans, and not just those state laws governing subjects covered by the federal statute. The Conference Committee deliberately rejected the approach employed in earlier House and Senate versions of the bill, which preempted only matters actually regulated by ERISA, in favor of the broad preemption of all state laws relating to plans covered by the statute. See H.R. Conf. Rep. 93-1280, 93d Cong., 2d Sess. 383 (1974). Describing the conferees' intent to the House of Representatives, Congressman Dent explained that "the provisions of Section 514 would reach any rule, regulation, practice, or decision of any State * * * which would *affect* any employee benefit plan" covered by ERISA. 120 Cong. Rec. 29197 (1974) (emphasis added).

As this Court recently noted in *Fort Halifax Packing Co.* v. *Coyne*, No. 86-341 (June 1, 1987), slip op. 9, one effect of ERISA's broad preemption of state law is that it "afford[s] employers the advantages of a uniform set of administrative procedures governed by a single set of regulations." Congress recognized that "employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities," and that if "[f]aced with the difficulty or impossibility of structuring administrative practices according to a set of uniform guidelines, an employer may decide to reduce benefits or simply not to pay them at all." *Id.* at 8, 11; see also *Shaw*, 463 U.S. at 105 n.25. ERISA's broad preemption provision encourages the formation of private employee benefit plans "by eliminating the threat of conflicting and inconsistent State and local regulation."

120 Cong. Rec. 29197 (1974) (remarks of Rep. Dent); see also *id.* at 29933 (remarks of Sen. Williams).

B. Garnishment Laws "Relate To" ERISA Plans Insofar As They Authorize Garnishment Of ERISA Plans

The three courts below all erred in concluding that ERISA does not protect welfare benefit plans from garnishment pursuant to state laws. State garnishment laws "relate to" welfare benefit plans insofar as they authorize garnishment of those plans, and therefore are preempted by Section 514(a).

1. Like the employment discrimination law involved in *Shaw*, garnishment statutes, although also governing other matters, may "relate to" welfare benefit plans by affecting such plans. Most obviously, a garnishment law may affect welfare benefit plans by authorizing judgment creditors to appropriate plan assets before they are disbursed as benefits to plan participants or beneficiaries. Garnishment actions brought against welfare benefit plans depend entirely upon the participants' or beneficiaries' rights to recover benefits,[5] and act to reduce pro tanto the participants' or beneficiaries' claims under ERISA. In a real sense, such actions thus determine whether and to what extent participants or beneficiaries will receive plan benefits. Because garnishment directly affects the distribution of plan assets and may bar participants' and beneficiaries' claims for benefits, garnishment laws plainly "relate to" welfare benefit plans insofar as they authorize garnishment of those plans.

---

[5] See, *e.g.*, *Scarboro* v. *Ralston Purina Co.*, 160 Ga. App. 576, 287 S.E.2d 623 (1981) (position of garnishing plaintiff creditor depends upon defendant debtor's right to recover assets in hands of garnishee); *Goodyear Tire & Rubber Co.* v. *New Amsterdam Casualty Co.*, 101 Ga. App. 577, 114 S.E.2d 546 (1960) (where no debt is owed by garnishee to defendant debtor, there is no basis for garnishment).

Indeed, permitting garnishment of ERISA plans on behalf of general creditors would not merely affect such plans, it would conflict with specific provisions going to the heart of ERISA. Congress enacted ERISA to ensure that employees and their beneficiaries actually receive promised fringe benefits. See 29 U.S.C. 1001(a); *Alessi* v. *Raybestos Manhattan, Inc.*, 451 U.S. at 510 & n.5.[6] To ensure that fringe benefits are actually paid, §§ 403(c)(1) and 404(a)(1)(A) of ERISA, 29 U.S.C. 1103(a)(1) and 1104(a)(1)(A), require trustees to hold and expend trust funds "for the *exclusive* purposes of providing benefits" and "defraying reasonable expenses of administering the plan" (emphasis added). A payment to a general creditor of a beneficiary is not made for the purpose of providing benefits and is not the payment of an administrative expense, and therefore is contrary to those provisions.[7] Because paying funds held in trust by ERISA plans to

---

[6] Congress, in enacting ERISA, was particularly concerned with "the 'great personal tragedy' suffered by employees whose vested benefits are not paid when pension plans are terminated" (*Nachman Corp.*, 466 U.S. at 374 (footnote omitted) (quoting from a statement by Senator Bentsen)), and, accordingly, imposed greater requirements on pension plans than on welfare plans. See 29 U.S.C. (& Supp. III) 1051-1086 (participation, vesting, and funding provisions). But evidence before Congress also reflected abuse involving misuse and mismangement of welfare benefit funds—see, *e.g.*, *Private Welfare and Pension Plan Legislation: Hearings on H.R. 1045, H.R. 1046, and H.R. 16462 Before the General Subcomm. on Labor of the House Comm. on Education and Labor*, 91st Cong., 1st & 2d Sess. 463, 470-472 (1970) (statement of George Shultz, Secretary of Labor)—and ERISA's fiduciary responsibilities and trust requirements apply equally to pension and welfare plans. See 29 U.S.C. (& Supp. III) 1101-1113.

[7] In addition, Section 404(a)(1)(D) requires that payments be made "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [Title I]." Payment of trust funds to creditors of a beneficiary violates specific provisions of the Trust Agreement

persons other than plan participants is contrary to specific provisions of ERISA—and, indeed, "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of ERISA (*Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941))—garnishment of ERISA plans on behalf of general creditors would be barred even in the absence of ERISA's broad express preemption provision.[8]

2. Garnishment also "relate[s] to" employee benefit plans by imposing burdens on trustees. Under Georgia law, garnishment commences with the filing of an affidavit by the plaintiff creditor (Ga. Code Ann. § 18-4-61 (1982)) and the issuance of a summons of garnishment by the clerk of court (§ 18-4-62(a) (Supp. 1987)). The garnishee—in this case, the trustees of the Fund—must file an answer to the summons no sooner than 30 days and no later than 45 days after it is served (§ 18-4-62(a)), describing the money or property in the garnishee's possession that is subject to garnishment (§ 18-4-82). If the garnishee for any reason is unable to provide the required information, the answer must "plainly, fully, and distinctly set forth" all the facts concerning the inability to answer (§ 18-4-82). A garnishee who fails to answer within 45 days is automatically in default (§ 18-4-90), and failure properly to answer may subject the garnishee to disallowance of any otherwise reimbursable expenses (§ 18-4-92, 18-4-97 (& Supp. 1987)).

---

establishing the Fund, since Article VII, section 5 of the Trust Agreement provides that "said Fund shall not be liable for or subject to the debts, contracts or liabilities of the * * * employees [or] beneficiaries." The trustees of the Fund could be subject to personal liability for breach of fiduciary responsibility for failure to observe the terms of ERISA or the Trust Agreement. See 29 U.S.C. 1109 and 1132.

[8] This is not to suggest that ERISA prohibits a general creditor from proceeding against a debtor to recover money once it has been distributed to him by the Fund.

Along with the answer, the garnishee must deliver to the court all money or property subject to garnishment (§ 18-4-84). Service of the summons operates as a lien on the garnishee's indebtedness to the judgment debtor—here, the participants in the Fund—at the date of service, and upon all future indebtedness accruing up to the date of the answer, at which time the garnishee's status of indebtedness becomes fixed (§ 18-4-20(b) (Supp. 1987); *Estridge* v. *Janko*, 96 Ga. App. 246, 99 S.E.2d 682, 687 (1957); *Anderson* v. *Ashford & Co.*, 174 Ga. 660, 163 S.E. 741 (1932)). Section 18-4-20(d) (& Supp. 1987), however, exempts a proportion of a debtor's "aggregate disposable earnings" from post-judgment garnishment.[9] A garnishee paying over exempt earnings must assert the debtor's right to an exemption or the judgment and satisfaction in garnishment will not bar an action by the debtor against the garnishee on the underlying indebtedness. See *Cale* v. *Eastern Air Lines, Inc.*, 159 Ga. App. 630, 284 S.E.2d

---

[9] "Earnings" generally include "compensation paid or payable for personal services" (§ 18-4-20(a)(2) (& Supp. 1987)). The term "aggregate disposable earnings" refers to those earnings remaining after deduction of "amounts required by law to be withheld" (§ 18-4-20(a)(1) (& Supp. 1987)), and has been interpreted to include only those items or sources of earnings within the control or possession of the garnishee. See *Parham* v. *Lanier Collection Agency & Service, Inc.*, 178 Ga. App. 84, 341 S.E.2d 889 (1986). While the Georgia courts have not considered whether vacation pay constitutes "earnings" under the Georgia statute, this Court has suggested that vacation pay is protected by the Consumer Credit Protection Act under the similarly defined exemptions from garnishment contained in that statute (15 U.S.C. 1671). See *Lines* v. *Frederick*, 400 U.S. 18, 20 (1970) (per curiam) (holding that vacation pay is a part of wages and therefore not property under control of the bankruptcy trustee); *Riley* v. *Kessler*, 2 Ohio Misc.2d 4, 441 N.E.2d 638 (1982) (vacation pay constitutes "earnings" within the meaning of 15 U.S.C. 1672); but cf. *Pallante* v. *Int'l Venture Investments, Ltd.*, 622 F. Supp. 667 (N.D. Ohio 1985) (severance pay was not "earnings" in view of its non-periodic, lump-sum nature).

647, 648 (1981), (citing *Studdard* v. *Barge-Thompson Co.*, 44 Ga.App. 349, 350, 161 S.E. 638 (1931)). Moreover, a garnishee also must comply with the federal garnishment restrictions set by Title II of the Consumer Credit Protection Act (CCPA), 15 U.S.C. 1671 (& Supp. III) *et seq.*, to the extent they are more restrictive than the provisions of state law. See 15 U.S.C. 1677; *Hodgson* v. *Cleveland Municipal Court,* 326 F. Supp. 419 (N.D. Ohio 1971).[10]

Given the complexity of the state garnishment procedures, their application to ERISA plans imposes significant burdens on plan trustees. Here, even absent any dispute on the merits of the garnishments, the trustees of the Fund would be required, for each of the 23 individual participants involved, to confirm the identity of the defendant debtor, calculate his or her maximum entitlement from the Fund for the period between the service date and the reply date of the summons of garnishment, compute and apply any relevant exemptions from garnishment, determine the amount that each individual owes to respondent, file timely and complete answers, and make payment into state court of the lesser of the amount owed to respondent or the amount of the individual's nonex-

[10] Title II of the CCPA establishes certain minimum restrictions on garnishments (15 U.S.C. 1673), and prohibits the discharge of any employee because his or her earnings have been subject to garnishment for any one indebtedness (15 U.S.C. 1674(a)). Significantly, Congress established the protections against discharge in response to evidence that wage garnishment constitutes a heavy and costly administrative burden for employers and that "[m]any employers, rather than undertake the costly procedure to garnishee wages, will discharge the worker." *Hearings on H.R. 11601 Before the Subcomm. on Consumer Affairs of the House Comm. on Banking and Currency*, 90th Cong., 1st Sess. 754, 757 (1967) (statement of I. W. Abel, President, United Steelworkers of America). See also 114 Cong. Rec. 1832 (1968) (remarks of Rep. Halpern); *id.* at 1837-1838 (letter from H. C. Lumb, Vice President, Corporate Relations and Public Affairs, Republic Steel Corp.).

empt entitlement. See Pet. App. A21. And, in the event of a contest over, for example, the validity of the garnishment, the liability of the garnishee, or priorities among garnishments and other levies, plan trustees may be subject, as in this case, to major litigation.

In addition, as trustees of a multiemployer welfare plan covering participants in several states, petitioners are potentially subject to multiple garnishment orders under varying or conflicting state laws. The Fund is potentially subject to garnishment in any of four states, each of which imposes different rules for the processing of garnishments, the determination of exemptions from garnishments, and the duties and liabilities of garnishees. The trustees therefore might be "required to accommodate conflicting regulatory schemes in devising and operating a system for processing claims and paying benefits—precisely the burden that ERISA preemption was intended to avoid." *Fort Halifax,* slip op. 7.[11]

3. In *Shaw*, this Court acknowledge that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan" (463 U.S. at 100 n.21). This case, however, like *Shaw*, "plainly does not present a borderline question" (*ibid.*) because garnishment of welfare benefit plans directly interferes with the distribution of plan assets and burdens plan administration to a significant extent. It is difficult to imagine a more direct effect on a trust fund than that of a law that determines who will receive payments from the trust. Moreover, permitting garnishment frustrates the overall purpose of

[11] As Congress found in another context, federal regulation of garnishment is necessary because "[t]he great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country." 15 U.S.C. 1671(a)(3).

ERISA to assure that participants and beneficiaries receive the benefits to which they are entitled under the plan. And the substantial and potentially conflicting burdens imposed by state garnishment laws interfere with the administration of employee benefit plans. Therefore, this case involves precisely the "sort of interference with the administration of employee benefit plans" that "ERISA's comprehensive preemption of state law was meant to minimize" (*id.* at 105 n.25).

The Ninth Circuit concluded in *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 679 F.2d 1307 (1982), vacated, 463 U.S. 1 (1983), that ERISA preempted a California tax collection law insofar as it permitted state authorities to levy on funds held in trust under a vacation benefit plan. The court of appeals correctly reasoned that the purpose of a vacation benefits plan is "to provide accumulated money to a worker for future beneficial use" and that it would conflict with that purpose to allow the money set aside in trust to be used for other purposes (679 F.2d at 1309). The court did not find merit to the dissent's unsupported argument that "the administrative burden entailed in litigating a levy's validity • • • is simply too minor" to warrant preemption (*id.* at 1312).[12] Although

[12] Other courts, following the dissenting opinion in *Franchise Tax Board*, have allowed garnishment of employee benefit plans. See *St. Paul Fire & Marine Ins. Co.* v. *Cox*, 752 F.2d 550, 552 n.3 (11th Cir. 1985); *Local Union 212, IBEW Vacation Trust Fund* v. *Local 212, IBEW Credit Union*, 735 F.2d 1010 (6th Cir. 1984) (per curiam), aff'g 549 F. Supp. 1299, 1302 (S.D. Ohio 1982); *Electrical Workers, Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154, 159 (Mo.1979); *First National Bank of Commerce* v. *Latiker*, 432 So.2d 293, 296 (La. Ct. App. 1983). Those courts, however, reasoned that the states are free to regulate employee benefit plans in areas not regulated by ERISA, contrary to this Court's decisions in *Alessi, Shaw, Metropolitan Life,* and *Pilot Life* (see page 8-9, *supra*). Moreover, Congress has specifically endorsed the decision in *Franchise Tax Board*, making clear that Section 514(a) generally prohibits garnishment of welfare benefit plans (see pages 18-19, *infra*).

this Court vacated the court of appeals' judgment in *Franchise Tax Board* for lack of jurisdiction, holding that the case had been improperly removed from state to federal court, it noted that "the Court of Appeals may well be correct that ERISA precludes enforcement of the State's levy in the circumstances of this cases" (463 U.S. at 26).[13]

A recent congressional enactment conclusively shows that Congress does not consider the application of state garnishment laws to ERISA plans to have a tenuous effect on those plans, but instead understands Section 514(a) generally to prohibit garnishment of ERISA plans. In 1984 Congress adopted Section 514(b)(7), which provides that Section 514(a) "shall not apply to qualified domestic relations orders (within the meaning of [29 U.S.C. 1056(d)(3)(B)(i)])." Retirement Equity Act of 1984, Pub. L. No. 98-397, § 104(b), 98 Stat. 1436, 29 U.S.C. (& Supp. III) 1144(b)(7). The 1984 amendment codified a line of cases in which the courts had found an implied exception permitting garnishment of ERISA plans to satisfy family support and community property obligations contained in state court orders.[14] Similarly, the Department of Labor had interpreted Section 514(a) to preempt state judicial or administrative agency processes to levy upon benefits due a participant or beneficiary under an employee welfare benefit plan, except for the enforcement of certain

[13] The case is currently pending on remand to the Superior Court of the State of California for the County of Los Angeles (No. C-326040).

[14] *AT&T Co.* v. *Merry*, 592 F.2d 118 (2d Cir. 1979); *Operating Engineers' Local # 428 Pension Trust Fund* v. *Zamborsky*, 650 F.2d 196 (9th Cir. 1981) (collecting cases); *Tenneco Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983); *Bowen* v. *Bowen*, 715 F.2d 559 (11th Cir. 1983) (per curiam); *Stone* v. *Stone*, 450 F. Supp. 919 (N.D. Cal. 1978), aff'd, 632 F.2d 740 (9th Cir. 1980), cert. denied, 453 U.S. 922 (1981); *In re the Marriage of Campa*, 89 Cal. App. 3d 113, 152 Cal. Rptr. 362 (1979), appeal dismissed, 444 U.S. 1028 (1980).

domestic relations orders. See, *e.g.*, Op. Dep't of Labor No. 79-90A (Dec. 28, 1979); Op. Dep't of Labor No. 80-39A (June 27, 1980). The basis for recognizing this exception to the preemptive effect of Section 514(a) prior to the enactment of Section 514(b)(7) was Congress's express declaration in ERISA that "the continued well-being and security of millions of employees *and their dependents* are directly affected by [the] plans" (§ 2(a), 29 U.S.C. 1001(a) (emphasis added)), so that "[m]embers of the families of employees are included in the class which ERISA protects" (*Stone* v. *Stone*, 450 F. Supp. 919, 926 (N.D. Cal. 1978), aff'd, 632 F.2d 740 (9th Cir. 1980), cert. denied, 453 U.S. 922 (1981)).[15] Congress expressed no similar concern for general creditors such as respondent.

In enacting Section 514(b)(7), Congress made clear that Section 514(a) otherwise preempts state garnishment laws. The House Report stated that "the Committee emphasizes that, except as expressly provided, nothing in the bill is intended to limit or otherwise change the original broad intent behind ERISA's rule of preemption. That intent has always been to preempt state or local government laws or actions of any type which directly or indirectly relate to any employee benefit plan." H.R. Rep. 98-655, 98th Cong., 1st Sess. Pt. 1, at 42 (1984). Indeed, Congress specifically endorsed the Ninth Circuit's holding in *Franchise Tax Board*, stating that "the Committee reasserts

[15] The creation of an implied exception from preemption for family obligations also was supported by a line of decisions of this Court recognizing domestic relations as uniquely the province of state law and requiring the utmost clarity before concluding that a domestic relations law is preempted. As this Court recently stated, " '[o]n the rare occasion when state family law has come into conflict with a federal statute, this Court has limited review under the Supremacy Clause to a determination whether Congress has "positively required by direct enactment" that state law be pre-empted.' " *Rose* v. *Rose*, No. 85-1206 (May 18, 1987), slip op. 5 (quoting *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 581 (1979), quoting *Wetmore* v. *Markoe*, 196 U.S. 68, 77 (1904)).

that a state tax levy on employee welfare benefit plans is preempted by ERISA (see the holding of the 9th Circuit in *Franchise Tax Board* • • •)" (*ibid.*). As one congressman stated, the exception codified by Section 514(b)(7) "preserves and clarifies the original broad preemption of State law under ERISA section 514 while carving out an appropriate and well-defined exception for domestic relations orders meeting specific standards" (130 Cong. Rec. H8756 (daily ed. Aug. 9, 1984) (remarks of Rep. Erlenborn)).[16]

C. Section 206(d) Does Not Mandate, By Negative Implication, That States Permit Garnishment Of ERISA Plans

The Georgia Supreme Court concluded that ERISA prohibits garnishment of pension plans but permits (indeed, mandates) garnishment of welfare plans. See Pet. App. A2. It based its conclusion that ERISA prohibits garnishment of pension plans on Section 206(d)(1) of ERISA, 29 U.S.C. 1056(d)(1), which requires that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated," so that both voluntary and involuntary assignments of pension benefits are prohibited.[17] Since ERISA contains no similar provi-

[16] This Court cited *Merry*, one of the cases authorizing garnishment to satisfy family obligations, as analogous support for the proposition that some state laws may affect employee benefit plans so tenuously that they are not preempted, in *Shaw* (463 U.S. at 100 n.21). It seems clear, however, that Congress has clarified that state garnishment laws are preempted by Section 514(a) insofar as they authorize garnishment of employee benefit plans, except that garnishment is permissible to fulfill family obligations.

[17] Most courts have held that Section 206(d)(1) prohibits garnishment of pension plans. See, *e.g.*, *Tenneco, Inc.* v. *First Virginia Bank*, 698 F.2d 688 (4th Cir. 1983); *General Motors Corp.* v. *Buha*, 623 F.2d 455 (6th Cir. 1980); *Commercial Mortgage Ins., Inc.* v. *Citizens Nat'l Bank*, 526 F. Supp. 510 (N.D. Tex. 1981); *Helmsley-Spear, Inc.* v. *Winter*, 74 A.D.2d 195, 426 N.Y.S.2d 778 (1980), aff'd, 52 N.Y.2d

sion pertaining to welfare plans, the court concluded, by negative implication, that welfare benefits may be garnished. Indeed, it concluded that Section 206(d) bars the states from excepting welfare plan assets from general garnishment laws, so that ERISA preempts state laws such as Ga. Code Ann. § 18-4-22.1 (1982), which prohibits garnishment of ERISA plans except to enforce certain family obligations. The Georgia Supreme Court read too much into Section 206(d).

It is correct that Section 206(d) deals only with pension plan assets and does not prohibit garnishment of welfare plan assets. Rather than affirmatively authorizing garnishment of welfare plan assets, however, Section 206(d) simply does not apply to welfare plans. At the same time, Section 514(a) preempts state laws relating to both pension and welfare plans, including those which would be invoked to effect involuntary assignments of plan assets. Thus, while garnishment of welfare plans pursuant to state law is not prohibited by Section 206(d), it is prohibited by Section 514(a).[18]

984, 419 N.E.2d 1078, 438 N.Y.S.2d 79 (1981); contra, *Nat'l Bank* v. *IBEW Local #3*, 69 A.D. 2d 679, 419 N.Y.S.2d 127 (1979), appeal dismissed as moot, 48 N.Y.2d 752, 397 N.E.2d 1333, 422 N.Y.S.2d 666 (1979). That conclusion is supported by the fact that the identical provision in Section 401(a)(13) of the Internal Revenue Code of 1954 (26 U.S.C. (& Supp. III)) has been interpreted in a Treasury regulation to prohibit both voluntary assignments and garnishment by operation of law. 26 C.F.R. 1.401(a)-13(b)(1) (1954 Code).

[18] Section 514(a) does not, however, bar voluntary assignments by plan participants since voluntary assignments do not rely on provisions of state law. See, *e.g.*, *Misic* v. *Building Service Employees Health & Welfare Trust*, 789 F.2d 1374, 1377 (9th Cir. 1986) (permitting assignment by a beneficiary of his right to reimbursement under a health care plan to the health care provider); see also 29 C.F.R. 2509.78-1 (interpreting ERISA to permit voluntary assignment of vacation plan benefits, provided the plan documents expressly permit a participant to make such an assignment and certain other conditions are met).

There is some overlap between Section 206(d) and Section 514(a), since both generally prohibit involuntary assignment of pension benefits.[19] This overlap results from the fact that early versions of ERISA contained provisions prohibiting the alienation of pension benefits,[20] whereas the broad and partially redundant preemption provision was added by the Conference Committee (see *Shaw*, 463 U.S. at 98 & n.18). Our interpretation of the two provisions renders neither superfluous, however, since Section 206(d) prohibits voluntary alienation of pension benefits, which is not prohibited by Section 514(a), while Section 514(a) preempts a variety of state laws relating to ERISA plans that are not affected by Section 206(d).

The Georgia Supreme Court turned Section 514(a) on its head. That provision broadly *preempts* state laws insofar as they affect ERISA plans. It does not *mandate* state laws authorizing the garnishment of welfare plans. In light of ERISA's broad preemption provision and the express exception to it for certain domestic relations orders in Section 514(b)(7), there is no basis for the Georgia Supreme Court's conclusion that Section 206(d) implicitly demonstrates that Congress intended to mandate garnishment of welfare plan assets.

The language of the Georgia statute, on the other hand, appears on its face to be fully consistent with ERISA. Intending "to make Georgia law identical to federal law" (Pet. App. A20), the Georgia legislature provided that "[f]unds or benefits of a pension, retirement, or employee

---

[19] Section 206(d) was amended in 1984, like Section 514(b)(7), to authorize alienation of pension plan benefits to satisfy certain family obligation. See 29 U.S.C. (& Supp. III) 1056(d)(3), added by Pub. L. No. 98-397, Tit. I, § 104(a), 98 Stat. 1433.

[20] See S.4, 93d Cong., 1st Sess. (1973) as reported by the Senate Committee on Labor and Public Welfare, S. Rep. 93-127, 93d Cong., 1st Sess. 23-24 (1973), and H.R. 12481, 93d Cong., 2d Sess. (1974) as reported by the House Committee on Ways and Means, H.R. Rep. 93-779, 93d Cong., 2d Sess. 77-78 (1974).

benefit plan or program subject to [ERISA] shall not be subject to the process of garnishment * * * (2) unless such garnishment is based upon a judgment for alimony or for child support" (Ga. Code Ann. § 18-4-22.1 (1982)). This is in complete harmony with the preemptive effect of Section 514(a) in barring garnishment of ERISA plans, except to satisfy certain domestic relations obligations. Under both Section 18-4-22.1 and Section 514(a), general creditors such as respondent may not garnish welfare benefit plans.

CONCLUSION

The judgment of the Supreme Court of Georgia should be reversed.

Respectfully submitted.

CHARLES FRIED
Solicitor General

DONALD B. AYER
Deputy Solicitor General

CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General

GEORGE R. SALEM
Solicitor of Labor

ALLEN H. FELDMAN
Associate Solicitor

CAROL A. DE DEO
Deputy Associate Solicitor

BETTE J. BRIGGS
Attorney

AUGUST 1987

U.S. GOVERNMENT PRINTING OFFICE 1987 — 181 483/43002

AMICUS CURIAE

BRIEF

No. 86-1387

In The Supreme Court

OF THE

United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., AND A. FERNANDO TORRES, as trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE

JOHN K. VAN DE KAMP,
Attorney General of the State of California
EDMOND B. MAMER,
Supervising Deputy Attorney General
RAYMOND B. JUE,
Deputy Attorney General
3580 Wilshire Boulevard,
Los Angeles, California 90010
Telephone: (213) 736-2038

Attorneys for the State of California as Amicus Curiae

PANDICK CALIFORNIA, INC. - 1900 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90007

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 86-1387

In The Supreme Court

OF THE

United States

OCTOBER TERM, 1986

JOHN H. MACKEY, DON KLAGES, GARY G. WISE, FRANK RYAN, WILLIE E. SLOAN, CAPT. JOHN WIGHTMAN, BENJAMIN FLOWERS, ROBERT JACOBI, MELVIN ANDREWS, JAMES MCINTIRE, PERRY HARVEY, JR., AND A. FERNANDO TORRES, as trustees of the South Atlantic ILA/Employers Vacation and Holiday Fund,

Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

STATEMENT OF INTEREST

The State of California (hereinafter "California"), through its Franchise Tax Board, is empowered by California law to assess and collect state personal income takes owing from persons working, residing or doing business in the State. As part of its tax collection efforts, California will sometimes use the remedy of a levy upon persons having in their possession or

control funds belonging to the delinquent taxpayer.[1] California has, at times, issued such levies to vacation trust funds which are also employee welfare benefit plans qualified under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. section 1001 et seq., to collect income taxes owing from persons who happen to be participants in such ERISA welfare plans.[2] California does not, however, levy upon funds being held by employee benefit *pension* plans.

Most vacation trust funds, when confronted with California's tax levy, have argued that the State is precluded by ERISA from levying upon the monies held by them. Specifically, these vacation trust funds contend that California's levying authority has been preempted by ERISA action 514(a), 29 U.S.C. section 1144(a). The ERISA preemption issue is and continues to be the subject of extensive litigation.[3] California therefore has a manifest interest in the Court's determination of the issues of this case because the Solicitor General, in his brief submitted on behalf of the United States as amicus curiae,[4] has taken the position that ERISA generally and broadly "preempts any state law provisions insofar as they allow creditors to garnish welfare benefit plans . . ." (U.S. Amicus, page 5). The Solicitor General's broad interpretation of ERISA preemption would seemingly encompass even the tax levying authority given to California's Franchise Tax Board.

---

[1] California Revenue and Taxation Code section 18817 authorizes the Franchise Tax Board to require any person in possession of things of value belonging to a taxpayer to withhold the amount of any delinquent tax, penalties and interest and to transmit the withheld amount to the Franchise Tax Board. The levying authority of the Franchise Tax Board was acknowledged by this Court in *Franchise Tax Bd.* v. *Laborers Vacation Trust* (1983) 463 U.S. 1, 5.

[2] The Franchise Tax Board estimates, for example, that vacation trust funds in California are currently holding approximately three million dollars under levies issued by the Franchise Tax Board to collect delinquent state personal income taxes. These vacation trust funds appear to be similar to the South Atlantic ILA/Employers Vacation and Holiday Fund involved in this case.

[3] See, for example, *Franchise Tax Bd.* v. *Laborers Vacation Trust*, *supra*, 463 U.S. 1 and *Ashton* v. *Cory* (9th Cir. 1986) 780 F.2d 816.

[4] Said brief shall be hereafter referred to as "U.S. Amicus".

California submits that the Solicitor General's position is incorrect. Because this State has a vital interest in preserving what it believes to be a legitimate and proper tax collection remedy, California expresses its views in this amicus curiae brief for the Court's consideration.

SUMMARY OF ARGUMENT

California's tax levy statute, as embodied in California Revenue and Taxation Code section 18817, is a law of general application which does not directly or indirectly regulate the terms or conditions of vacation trust funds which are employee welfare benefit plans qualified under ERISA. The effect of the statute on vacation trust funds is at most only incidental. Therefore, a tax levy imposed on a vacation trust fund is not preempted by ERISA because the levy does not "relate to" the fund within the meaning of ERISA section 514(a), 29 U.S.C. section 1144(a).

In addition, California's tax levy statute does not interfere with the purposes of ERISA or conflict with any provision of ERISA in regard to welfare benefits. Congress did provide in ERISA that pension plan benefits shall not be assigned or alienated, but provided no language to give the same protection to welfare plan benefits. It follows that Congress had no intent to give welfare plans the same protection.

Lastly, Congress and this Court have been in agreement that federal courts should not interfere in the fiscal operations of the States. This Court has recognized the dangers inherit in disrupting the administration of State tax systems. Congress did not intend for ERISA to interfere with a State's right to assess and collect taxes.

ARGUMENT

I. The Tax Levying Authority Of The States Has Not Been Preempted By ERISA

A. *Introduction*

It is the apparent intent of the Solicitor General to have this Court declare that the tax levying authority of the various States (along with garnishment laws in general) are preempted by ERISA section 514 insofar as a State uses that authority to levy on a vacation trust fund to collect the delinquent taxes of a participant of that fund. However, it must be emphasized at the outset that when a State uses the levy remedy, it is not assessing a tax on the vacation fund itself. Rather, the fund is merely a tax collection source.[5]

It is a serious step to preempt a state statute, especially a statute dealing with the collection of taxes, one of the traditional police powers of the State. As this Court has stated, the "exercise of federal supremacy is not lightly to be presumed." (*Alessi* v. *Raybestos-Manhattan, Inc.* (1981) 451 U.S. 504, 522, quoting *New York State Dept. of Soc. Services* v. *Dublino* (1973) 413 U.S. 405, 413. In addition, since this is a field which has traditionally been occupied by the States, "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." (*Rice* v. *Santa Fe Elevator Corp.* (1947) 331 U.S. 218, 230; Accord *Jones* v. *Rath Packing Co.*, (1977) 420 U.S. 519, 525.)

California has a vital public interest in collecting its revenue. Thus, a tax collection statute must be accorded a high

[5] The use of a tax levy is therefore plainly distinguishable from the situation in *National Carriers' Conf. Com.* v. *Heffernan* (D.Conn. 1978) 454 Fed. Supp. 914 where the State attempted to specifically tax the benefits paid by a welfare plan. Moreover, the court noted that the preempted statute was "not merely a general taxing provision that catches employee benefit plans within its wide sweep. On the contrary, the tax [was] specifically directed at such plans exclusively, . . ." (*Id.* at 915.)

presumption of validity. As this Court stated in *Kelly* v. *Washington* (1937) 302 U.S. 1, 14, "When the State is seeking to protect a vital interest, we have always been slow to find that inaction of Congress has shorn the State of the power which it would otherwise possess."

It is equally true that "The exercise by the State of its police power, which would be valid if not superseded by federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together.'" (Citations) *Id.* at 10.

In the case of *Hines* v. *Davidowitz* (1940) 313 U.S. 52, this Court stated:

> "Any concurrent state power [over alien registration] that may exist is restricted to the narrowest of limits; the state's power here is not bottomed on the same broad base as is its power to tax." (312 U.S. at 68.)

In determining whether Congress has clearly manifested that the tax levy statute of California or of any other state must be preempted, it is necessary to examine ERISA in general and specifically section 514.

B. *California's Tax Levy Statute Does Not Relate to or Regulate the Terms and Conditions of A Vacation Trust Fund*

ERISA section 514(a), 29 U.S.C. §1144(a) provides that "State" laws *relating* to employee benefit plans are superseded. The term "State" is defined to mean " . . . a State . . . which State . . . which purports to *regulate*, directly or indirectly, the *terms* and *conditions* of employee benefit plans . . . " (Emphasis added.) ERISA section 514(c)(2), 29 U.S.C. §1144(c)(2).)

The more restrictive language of ERISA section 514(c)(2) qualifies the "relate to" language of ERISA section 514(a). Thus, a State law only "relates" to an employee benefit plan if it *regulates* the *terms* and *conditions* of the plan. Clearly, California's levy statute is a law of general application which does not regulate a term or condition of the vacation fund.

Rather, such a statute seeks only to implement the State's sovereign power to assess and collect taxes by securing the payment of delinquent taxes through a tax levy on vacation funds.

By specifically choosing the word "regulate," Congress indicated that it had no intention to preempt State laws that have no direct bearing on benefit plans. If Congress had intended to preempt State laws which had a peripheral effect on benefit plans it could have used more general words such as "affect" or "influence," or it could have provided that ERISA plans are totally immune from all State laws. "ERISA section 514(a) was not . . . designed to preempt any state law with even the most tangential relation to ERISA." (*Stone* v. *Stone* (N.D. Cal. 1978) 450 F.Supp. 919, 932, aff'd. (9th Cir. 1980) 632 F.2d 740, cert. denied (1981) 453 U.S. 922.) There is a "narrow category of laws which 'affect' employee benefit plans but which do not 'relate' to them within the meaning of §514(a)." (*Id.*) California submits that its tax levy statute is just such a law.

ERISA's preemptive scope is not limitless especially when it infringes on the sovereign power of the State to assess and collect delinquent taxes. It is only necessary to review this Court's decision in *Alessi* v. *Raybestos-Manhattan, Inc.* (1981) 451 U.S. 504 to see that section 514 does not preempt all State laws with the most tangential relationship to ERISA. Otherwise, this Court would not have reserved for future cases the question of the "other bounds" of ERISA'S preemptive language *Id.* at 525.

In *Alessi* v. *Raybestos-Manhattan, Inc., supra,* 451 U.S. 504, the Court found that a New Jersey statute was preempted by ERISA section 514(a), 29 U.S.C. section 1144(a), because it eliminated one method for calculating ERISA *pension* benefits that was permitted by federal law. The Court found that the New Jersey law applied *directly* to the calculation of the ERISA pension benefits. *Id.* at 524-525.

The New Jersey statute obviously was a direct regulation of ERISA pension plans because it mandated how their benefits

were not to be calculated. It regulated the content of the ERISA plan and the level of benefits, areas which would have been governed by the collective bargaining process. California's tax levy statute, by contrast, does not even mention ERISA plans and in no way attempts to regulate ERISA-covered benefits. It likewise does not intrude upon areas left to the bargaining of the parties.

Further, in *Shaw* v. *Delta Air Lines, Inc.* (1983) 463 U.S. 85, this Court held that New York's Human Rights Law was preempted under ERISA but that the Disability Benefits Law was not preempted. The preempted state statute mandated that employee benefit plans provide coverage for disability due to pregnancy on the same basis as other disabling conditions. California's tax levy statute, by contrast, does not mandate anything with regard to the level of benefits or participants of the plan.

In *Shaw*, the Court discussed the meaning of the "relates to" language in ERISA section 514(a), 29 U.S.C. section 1144(a). The Court found that "A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a *connection* with or *reference* to such a plan." (Emphasis added.) (463 U.S. at 96-97.) It is clear that a tax levy statute does not have *connection* with or *reference* to a vacation trust fund. Rather, such a law is one of general application which deals strictly with the collection of delinquent taxes.

The *Shaw* case makes it clear that ERISA section 514(a) was not meant to preempt all State laws with a *tangential* effect on ERISA plans. This Court has stated in *Shaw* that "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan. Cf. *American Telephone and Telegraph Co.* v. *Merry,* 592 F.2d 118, 121 (CA2 1979) (state garnishment of a spouse's pension income to enforce alimony and support orders is not preempted.) The present litigation plainly does not present a borderline question, and we express no views about where it would be appropriate to draw the line." (*Shaw* v. *Delta Air Lines, Inc., supra,* 463 U.S. at 100, n. 21.)

The analytical framework pronounced by the Court in *Alessi* and *Shaw* has been adhered to in its subsequent decisions. Thus, in *Metropolitan Life Inc. Co.* v. *Massachusetts* (1985) 471 U.S. 724, the Court determined that a State mandated benefits law did "relate to" to welfare plans governed by ERISA (Id. at 739), but that the law was "saved" from preemption by ERISA section 514(b)(2), 29 U.S.C., section 1144(b)(2). More recently, in *Pilot Life Ins. Co.* v. *Dedeaux* (1987) U.S. , 107 S.Ct. 1549, the Court found that a plaintiff's State common law tort and contract causes of action asserting improper processing of a claim for benefits under an insured employee benefit plan did "relate to" the plan and were preempted. (*Id.* at 1553).

However, the fact that the State laws in *Metropolitan* and *Pilot Life* were found to be preempted does not detract from the corollary proposition that there *are* outer bounds to ERISA's preemptive reach. Invalidation of all State legislation incidentally affecting ERISA plans would be far broader than the words Congress chose would support. For example, a building owned by an ERISA plan is surely subject to State laws regarding property taxes, fire and safety laws and similar matters historically regulated by the States, even though the State laws, when applied to a building owned by an ERISA plan, would clearly but tangentially affect the ERISA plan.

Thus, in *Rebaldo* v. *Cuomo* (2nd Cir. 1984) 749 F.2d 133, *cert. denied* (1985) 472 U.S. 1008, the Second Circuit Court of Appeals held that a State law aimed at regulating hospital rates was not preempted by ERISA. In so holding, the *Rebaldo* court reviewed ERISA section 514 and aptly noted that:

> "A preemption provision designed to prevent state interference with federal control of ERISA plans does not require the creation of a fully insulated legal world that excludes these plans from regulation of any purely local transaction." (749 F.2d at 138.)

The *Rebaldo* court determined that the law in question simply affected employee benefit plans in too tenuous and remote a manner to warrant a finding of preemption. (*Id.* at 138).

In similar fashion, the dictates of the Court as espoused in *Shaw* were followed in the Ninth Circuit to sustain a finding of *no* ERISA preemption respecting a California anti-discrimination statute (*Lane* v. *Goren* (9th Cir. 1984) 743 F.2d 1337). In *Lane*, the Ninth Circuit examined the State law and determined that it neither (1) related to an employee benefit plan nor (2) regulated the terms and conditions of such a plan. On the first point, the court noted that the state law applied to the plan in its capacity as an employer, *in the same manner it would apply to all employers.* Thus, the anti-discrimination law was one of general application and did not "relate to" the plan (*Lane* v. *Goren, supra* at 1340). On the second point, the *Lane* court noted, at page 1340:

> "ERISA imposes participation, funding, and vesting requirements on pension plans. §§201-306, 29 U.S.C. §§1051-86; see Shaw, 103 S.Ct. at 2896. It also sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility for both pension and welfare plans. §§101-111, 401-414, 29 U.S.C. §§1021-31, 1101-14; see Shaw, 103 S.Ct 2897. ERISA also provides for the fair and proper handling and disposition of benefit claims. *Russell* v. *Massachusetts Mutual Life Insurance Co.*, 772 F.2d 482, 488 (9th Cir. 1983). For purposes of this case we assume that the phrase 'terms and conditions' of benefit plans encompasses all these areas. *The California statutes in question in no way purport to reach any of them.* They merely prohibit employers from discriminating against employees on the basis of age, race, sex, or religion." (Emphasis added.)

In the same manner, California's tax levying statute similarly is one of general application. The State uses its levy as a tax collection device against *any* person who might hold funds belonging to a delinquent taxpayer. Thus, the fact that the levy may nominally affect a vacation trust fund in this tangential manner cannot be urged as a basis for preemption.

On the specific issue of whether ERISA preempts State garnishment laws, the cases of *Local Union 212, Etc.* v. *Local 212 IBEW Credit Union* (S.D. Ohio 1982) 549 F.Supp. 1299 and *Elec. Workers* v. *IBEW-NECA Holiday Trust* (1979) 583 S.W. 2d 154 are instructive. In the *Local Union 212* case, a credit union attempted to garnish certain participants' interest in an ERISA-covered vacation trust fund established by a bargaining agreement. The District Court, relying on the reasoning of the dissent in *Franchise Tax Bd., Etc.* v. *Const. Laborers, Etc.* (9th Cir. 1982) 679 F.2d 1307, vacated, (1983) 463 U.S.1, found that ERISA does not preclude a creditor from garnishing a vacation fund. The court based this opinion on its conclusion that ERISA section 206(d)(1), 29 U.S.C. section 1056(d)(1) protected only pension plans and *not* vacation plans, and that ERISA section 514(a), 29 U.S.C. section 1144(a) did not preempt the garnishment because Congress did not intend to protect vacation plans from garnishment. Finally, the court concluded that the garnishment statute did not "relate to" the vacation fund; and that any "regulating" effect on the plan regarding the administrative expense of processing the garnishment notices was minimal. (549 F.Supp. at 1302.)

The decision of the District Court is *Local Union 212* was appealed. In a per curiam decision, the Sixth Circuit Court of Appeals upheld the decision of the trial court. *Local Union 212, Etc.* v. *Local 212 IBEW Credit Union* (6th Cir. 1984) 735 F.2d 1010). The appellate court also decided to follow the reasoning of the dissent in the *Franchise Tax Bd.* case.

At issue in *Elec. Workers* v. *IBEW-NECA Holiday Trust supra*, 583 S.W.2d 154, was whether a credit union could garnish the Holiday Trust Fund pursuant to a judgment it had obtained against an IBEW member. The Missouri Supreme Court allowed the credit union to garnish the fund. The Court initially noted that the Holiday Trust was a *welfare* plan and not a pension plan. This fact was significant because the court properly determined that ERISA's regulation of welfare plans is simply not as comprehensive as that of pension plans (583

S.W.2d at 159). The Missouri Supreme Court proceeded to conclude that there was no ERISA preemption. As the court observed:

> "The enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA *with respect to welfare plans.*" (583 S.W.2d at 159; emphasis added.)

Based upon the foregoing, California would therefore urge the Court to reject the contention that a State's tax levy statute cannot be applied to ERISA *welfare* plans. California tax levy statute is general in nature and neutral in its application to welfare plans. The statute does not act to change the terms and conditions of such plans. Under these circumstances, federal preemption can be neither inferred nor implied.

II. California's Tax Levy Statute Does Not Interfere With The Purposes Of ERISA

Congress did not intend to preempt all State laws with merely an incidental connection to ERISA. It is more reasonable to assume that Congress only meant to preempt laws which interfered with the purposes and coverage of ERISA. To require a vacation trust fund to honor a tax levy of the State of California does not interfere with the purposes of ERISA. Furthermore, there is nothing in ERISA's legislative history which indicates a "clear and manifest purpose" (*Jones* v. *Rath Packing Co., supra*, 430 U.S. 519, 528) to prohibit California from collecting a participant's delinquent taxes from a vacation fund.

ERISA is a comprehensive statute "which Congress adopted after careful study of private retirement pension plans." (*Alessi* v. *Raybestos-Manhattan, Inc.* (1980) 451 U.S. 504, 510). Congress wanted to ensure through ERISA that a worker actually received the retirement benefits he had earned. (*Alessi, supra*, 451 U.S. at 510).

ERISA was enacted in response to various findings by Congress that private pension plans were not properly funded, were mismanaged and promised benefits which were never paid. (House Rep. No. 93-533, 93rd Cong., 2d Sess. (1974) U.S. Code Cong. & Admin. News, p. 4639 et seq.) One three year Congressional study of private pensions "clearly established that too many workers, rather than being able to retire in dignity and security after a lifetime of labor rendered on the promise of a future pension, find that their earned expectations are not to be realized." Statement by the Honorable Harrison A. Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, 93rd Cong., 2d Sess. (1974) U.S. Code Cong. & Admin. News, at p. 5177.

The basic purpose of ERISA is to protect the literally millions of people who depend on benefits from private pension plans for financial independence after retirement. (H. Rep. No. 92-533, 93rd Cong., 2d Sess. (1974) U.S. Code Cong. & Admin. News, p. 4639, 4640-4641; S. Rep. No. 93-137, 93rd Cong., 2d Sess., (1974) U.S. Code Cong. & Admin. News, pp. 4838, 4839-4840.)

ERISA made major reforms in the area of pension regulation. To a *lesser* degree, it provided protection for welfare plans.

A review of ERISA indicates that with regard to pension plans, Congress provided that workers would have reasonable participation and vesting rights, that plans would be adequately funded, that trustees would be held to high fiduciary standards, and that workers would have remedies if these provisions were not carried out. Workers in welfare plans were given protection in the area of fiduciary responsibility, reporting and disclosure and they were given remedies to enforce these provisions.

There is *nothing* in ERISA to suggest that Congress meant to insulate vacation funds from a State's tax levy statute of general application. In this connection, it is important to again note that with regard to pension plans, Congress specially prohibited the alienation of funds. (ERISA section 206(d), 29

U.S.C. section 1056(d).) There is *no* provision of ERISA which prohibits the alienation of welfare benefits. Since, Congress specifically protected pension plans from alienation but did not extend the same protection to welfare plans, this is further evidence that Congress did not intend to shield welfare plans from alienation, especially by a taxing agency.

The Solicitor General, while conceding that garnishment of welfare plans is not prohibited by ERISA section 206(d), argues that the ERISA's general preemption clause, section 514(a), bars garnishment of *any* employee benefit plan (encompassing both welfare *and* pension plans) pursuant to State law. (U.S. Amicus, p. 12.) However, such an argument would seemingly render ERISA section 206(d) a nullity. In other words, if ERISA section 514(a) preempts garnishment of both welfare and pension plans, what is the utility of giving pension plans the additional protection embodied in ERISA section 206(d)? California submits that the only reasonable conclusion is that welfare plan benefits were not intended to be protected from alienation.

California's tax levy statute is plainly and purely one of general application. It is a tax collection statute which serves the important public purpose of collecting revenue to fund operations of the State. With regard to welfare plans, the purposes of ERISA are to assure that participants receive pertinent information about the plans and that the fiduciaries are held to a high level of responsibility. A tax levy statute has no direct or indirect effect on these purposes of ERISA. It is clear that Congress can achieve its objectives with regard to welfare plans without controlling the collection of revenue by the State of California.

III. ERISA Must Not Be Interpreted To Interfere With The Right Of The State To Assess And Collect Taxes

Congress has recognized the importance of not interfering with a State's right to manage its fiscal affairs and thus never intended ERISA to be used as a method of interfering with the

collection of taxes. By enacting 28 U.S.C. §1341[6] Congress has provided that no district court shall enjoin the assessment, levy or collection of a tax. In several cases interpreting that statute, and in cases relying on the principle of comity, this Court has repeatedly held that the federal courts shall not interfere with a State's ability to collect its taxes. (See *California* v. *Grace Brethren Church* (1982) 457 U.S. 393, 410-411; *Fair Assessment in Real Estate Assn.* v. *McNary* (1981) 454 U.S. 100, 108; *Rosewell* v. *La Salle National Bank* (1981) 450 U.S. 503, 522; *Tully* v. *Griffin, Inc.* (1976) 429 U.S. 68, 73; *Great Lakes Co.* v. *Huffman* (1943) 319 U.S. 293, 298.)

In addition, this Court has stated: "This Court has long recognized the dangers inherent in disrupting the administration of state tax systems." (*California* v. *Grace Brethren Church* (1982) 457 U.S. 393, 410, n.23). California contends that this principle is directly applicable to the case at bar. It is obvious that if ERISA is interpreted to prohibit California from levying on a vacation fund, it will interfere with the revenue collection process of the State. Congress never intended ERISA to have this effect. Therefore, ERISA should not be interpreted to preclude a State from assessing and collecting its taxes, rights reserved to the States under the Tenth Amendment.

The power to tax is an incident of sovereignty and is coextensive with sovereignty. (*Harvester Co.* v. *Dept. of Taxation* (1944) 332 U.S. 435, 444-445; *Curry* v. *McCanless* (1938) 307 U.S. 357, 366.) It follows that "A necessary incident of power to tax property is the power to uniformly enforce the collection of the tax by any constitutional means deemed appropriate to that end." (*United States* v. *Hester* (10th Cir. 1943) 137 F.2d 145, 147-148.)

California has a paramount interest in collecting taxes from its taxpayers. This vital interest was recognized long ago by this Court in *Dows* v. *City of Chicago* (1870) 78 U.S. (11 Wall.)

[6] 28 U.S.C. section 1341 provides as follows:

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

108, where a National Bank tried to restrain the collection of a tax levied by the City of Chicago upon the bank's capital shares. This Court decided that no court could enjoin the tax, and stated as follows:

> "It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the mode adopted to enforce the taxes levied should be interfered with as little as possible." (*Dows, supra* 78 U.S. at 110.)

This Court has also stated that "The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government." (*Springer* v. *United States* (1880) 102 U.S. (12 Otto) 586, 594), and that "[T]axes are the lifeblood of government, and their prompt and certain availability an imperious need." (*Bull* v. *United States* (1935) 295 U.S. 247, 261; *Accord G.M. Leasing Corp.* v. *United States* (1977) 429 U.S. 338, 350.)

ERISA section 514(a) may be unconstitutional if it interferes with the sovereign right of California to uniformly collect taxes from all of its citizens. Thus, ERISA should be interpreted so that it does not interfere with this right. As this Court said in *Machinists* v. *Street* (1961) 367 U.S. 740, 749, "Federal statutes are to be construed as to avoid serious doubt of their constitutionality." (*Accord, Lynch* v. *Overholser* (1962) 369 U.S. 705, 710-711.) In *Fry* v. *United States* (1975) 421 U.S. 542, this Court said as follows:

> "While the Tenth Amendment has been characterized as a 'truism,' stating merely that 'all is retained which has not been surrendered,' (Citation), it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." (421 U.S. at 547 n.7.)

In *National League of Cities* v. *Usery* (1976) 426 U.S. 833, this Court held that even the Commerce Clause did not give Congress the authority to intrude upon a State's performance of essential government functions. This Court said:

> "We have repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." (426 U.S. at 845.)

The Solicitor General's interpretation of the broad scope of ERISA preemption is incorrect, at least insofar as it encompasses the tax collection power of the States. Congress did not intend to preempt California's tax levy statute. Therefore, ERISA should not be interpreted to interfere with the sovereign power of the State to assess and collect its taxes.

CONCLUSION

California's authority to impose a tax levy provides it with a tax collection remedy which is general in its application and which has at most only an incidental impact upon the party levied upon. Under there circumstances and given the recognized sovereign right of a State to assess and collect its taxes, the State of California respectfully requests that the Court find that tax levy statutes, such as California Revenue and Taxation Code section 18817, are not preempted by ERISA section 514(a) when applied to employee welfare benefit plans.

Respectfully submitted.

JOHN K. VAN DE KAMP,
Attorney General of the State of California

EDMOND B. MAMER,
Supervising Deputy Attorney General

RAYMOND B. JUE,
Deputy Attorney General
3580 Wilshire Boulevard,
Los Angeles, California 90010
Telephone: (213) 736-2038

Attorneys for the State of California as Amicus Curiae

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.:

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and am over the age of eighteen years and not a party to the within action or proceeding, that my business address is c/o Pandick, California, 1900 South Figueroa Street, Los Angeles, California 90007, that on this 26th day of August, 1987, I served the within Brief of the State of California as Amicus Curiae in the said action and by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

THOMAS W. GLEASON
26 Broadway, 17th Floor
New York New York 10004

CHARLES R. GOLDBERG
Farrington & Abbot
P.O. Box 9378
Savannah, Georgia 31412

CARL S. PEDIGO, JR.
DAVID H. JOHNSON
P.O. Box 9450
Savannah, Georgia 31412

CHARLES FRIED
Solicitor General
DONALD B. AYER
Deputy Solicitor General

CHRISTOPHER J. WRIGHT
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 26th, 1987 at Los Angeles, California.

By: Mark M. Schaefer
Mark M. Schaefer

AMICUS CURIAE

BRIEF

No. 86-1387

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

JOHN H. MACKEY, *et al.*,
Petitioners,
v.
LANIER COLLECTION AGENCY & SERVICE, INC.,
Respondent.

On Writ of Certiorari to the Supreme Court of Georgia

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL CITY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL GOVERNORS' ASSOCIATION, U.S. CONFERENCE OF MAYORS, COUNCIL OF STATE GOVERNMENTS, AND NATIONAL LEAGUE OF CITIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

ERIC B. AMSTUTZ
WALLACE K. LIGHTSEY
WYCHE, BURGESS, FREEMAN & PARHAM, P.A.
44 East Camperdown Way
Greenville, S.C. 29601
(803) 242-3131
Of Counsel

BENNA RUTH SOLOMON *
Chief Counsel
STATE AND LOCAL LEGAL CENTER
444 North Capitol St., NW
Suite 349
Washington, D.C. 20001
(202) 638-1445

* *Counsel of Record for* Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-1387

JOHN H. MACKEY, *et al.*,
Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,
Respondent.

On Writ of Certiorari to the Supreme Court of Georgia

MOTION FOR LEAVE TO FILE BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL CITY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL GOVERNORS' ASSOCIATION, U.S. CONFERENCE OF MAYORS, COUNCIL OF STATE GOVERNMENTS, AND NATIONAL LEAGUE OF CITIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Pursuant to Rule 36.3 of the Rules of the Court, *amici* respectfully move this Court for leave to file the attached brief *amicus curiae* in support of petitioners.*

---

* Petitioners' counsel informs us that they will not oppose, but will not consent to, the filing of this brief. Respondent has denied consent.

The *amici*, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.

The holding below, that the Employee Retirement Income Security Act (ERISA) prohibits a State from exempting from its own garnishment procedures employee welfare benefits, extends ERISA's implied preemptive effect to an extent that is unjustified by precedent, logic, or federal goals.

The importance of this case to *amici* stems from its potential disruption of longstanding principles governing state-federal relations. The decision below undercuts the authority of both state legislatures and state courts to tailor state judicial procedures for debt collection. The court below inferred from the *absence* in ERISA of a prohibition of garnishment of welfare funds and benefits that Congress affirmatively intended to *permit* such garnishment, and, therefore, to preclude its prohibition by the States.

The Georgia law involved in this case is not within ERISA's express preemption clause, because any effect that the state statute may have upon employee benefit plans is too remote to say that it "relates to" such plans and because the state statute pertains to benefits, not plans. *See Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1985); *Fort Halifax Packing Co. v. Coyne*, 107 S.Ct. 2211 (1987). Neither is it in conflict with any specific provision of the federal law, nor does it present an obstacle to attainment of the purposes of ERISA.

The Solicitor General, as *amicus curiae*, urges this Court to reverse the judgment under review on the ground that ERISA would directly preempt any state law *permitting* the garnishment of welfare fund benefits. Under this theory, the Georgia law, although not preempted, would be meaningless. *Amici* also support reversal of the judgment, but vigorously oppose the Solicitor General's theory, which would result in a finding of implied preemption that is in no way required by the case before the Court. Considerations of judicial restraint and comity strongly militate against adoption of this theory, which would invalidate or render meaningless one or more provisions of state law in a case where the Court can reach the same result by upholding a state law. There will be time enough for this Court to consider whether ERISA prohibits garnishment of employee welfare benefits when there is a challenge to a state statute that authorizes such garnishment.

Amici submit that the decision of the Georgia Supreme Court is wrong. Because this Court's decision concerning the scope of the preemptive effect of congressional legislation on state laws is a matter of prime importance to *amici* and their members, *amici* submit the attached brief to assist the Court in its resolution of this case.

Respectfully submitted,

ERIC B. AMSTUTZ
WALLACE K. LIGHTSEY
WYCHE, BURGESS, FREEMAN & PARHAM, P.A.
44 East Camperdown Way
Greenville, S.C. 29601
(803) 242-3131
Of Counsel

BENNA RUTH SOLOMON *
Chief Counsel
STATE AND LOCAL LEGAL CENTER
444 North Capitol St., NW
Suite 349
Washington, D.C. 20001
(202) 638-1445
* *Counsel of Record for* Amici Curiae

August 27, 1987

QUESTION PRESENTED

Whether a Georgia statute prohibiting garnishment of employee welfare benefits is preempted by the Employee Retirement Income Security Act of 1974 (ERISA).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-1387

JOHN H. MACKEY, *et al.*,
Petitioners,

v.

LANIER COLLECTION AGENCY & SERVICE, INC.,
Respondent.

On Writ of Certiorari to the Supreme Court of Georgia

BRIEF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL CITY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL GOVERNORS' ASSOCIATION, U.S. CONFERENCE OF MAYORS, COUNCIL OF STATE GOVERNMENTS, AND NATIONAL LEAGUE OF CITIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICI CURIAE*

The interest of the *amici* is set forth in the motion accompanying this brief.

STATEMENT OF THE CASE

This case is before the Court on writ of certiorari to the Supreme Court of Georgia, which held that Georgia's

exemption-from-garnishment statute[1] is preempted by the Employee Retirement Income Security Act of 1974 (ERISA).[2]

Petitioners are trustees for the South Atlantic ILA/ Employers Vacation and Holiday Fund. The Fund, which was created pursuant to a collective bargaining agreement, provides vacation and holiday benefits to eligible employees in thirteen South Atlantic ports. It qualifies as an employee welfare benefit plan under ERISA. See Section 3(1), 29 U.S.C. § 1002(1).

Respondent, a collection agency, began garnishment proceedings in November 1984 in the state court of Chatham County, Georgia, to enforce judgments that it had obtained against twenty-three longshoremen. All twenty-three longshoremen are eligible to receive vacation and holiday benefits from the Fund. Petitioners responded to the garnishment proceedings by claiming that, under the Georgia exemption-from-garnishment statute, the vacation and holiday benefits were not subject to garnishment. Notwithstanding that the Georgia statute expressly exempts employee welfare benefits from garnishment, the trial court entered a garnishment order.

The Georgia Court of Appeals reversed, holding that ERISA does not preempt Georgia's exemption-from-garnishment statute. The court concluded that, because the Georgia exemption-from-garnishment statute has too tenuous an effect upon employee benefit plans to "relate to" a plan, it was not preempted by Section 514(a) of ERISA, 29 U.S.C. § 1144(a). The court also noted that

---

[1] Ga. Code Ann. § 18-4-22.1 (1982). That statute provides in part: "Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended, shall *not* be subject to the process of garnishment . . . ." *Id.* (emphasis added).

[2] 29 U.S.C. (& Supp. III) §§ 1001-1461.

"[t]he enforcement of state court money judgments by creditors is a valid area of state concern, and is one which is totally unregulated by ERISA with respect to welfare plans." Pet. App. A-9.

The Supreme Court of Georgia reversed on the ground that ERISA permits garnishment of employee welfare benefits and, therefore, that the Georgia statute conflicts with ERISA. Because of that perceived conflict, the Georgia Supreme Court held that the state statute is preempted. Pet. App. A-4.

This Court granted certiorari to address the question whether Georgia's exemption-from-garnishment statute is preempted by ERISA.

SUMMARY OF ARGUMENT

This Court has always been reluctant to find preemption in the absence of compelling reasons. Analysis of the question presented by this case requires that the Court examine whether Georgia's exemption-from-garnishment statute either conflicts with an express provision in ERISA or is ousted by ERISA's preemption provision.

The Supreme Court of Georgia erred in holding that Georgia's exemption-from-garnishment statute conflicts with ERISA. The federal act is completely silent with regard to the regulation of the garnishment of employee welfare benefits. Unlike its treatment of pension plan benefits, ERISA neither forbids nor requires the States to permit the garnishment of employee welfare benefits; accordingly, Georgia's exemption-from-garnishment statute is not preempted on the basis of any conflict between state and federal law.

Nor is Georgia's exemption-from-garnishment statute preempted by Section 514(a) of ERISA, 29 U.S.C. § 1144(a). Georgia's exemption-from-garnishment law has too remote an effect upon employee benefit plans to

"relate to" a plan, the standard for preemption under Section 514(a). In any event, ERISA's preemption provision operates only if the state statute relates to an employee benefit *plan*, not just to employee welfare *benefits*. Georgia's exemption-from-garnishment statute does not affect plans, but rather provides protection from garnishment for "funds or benefits." For this reason as well, ERISA does not preempt the Georgia statute.

Furthermore, state policy regarding the enforcement of money judgments, which is the focus of Georgia's statute, is an area of traditional and vital state concern. Because ERISA lacks a clearly stated congressional intent to displace this area of traditional state regulation, the strong presumption against federal preemption is not overcome.

To decide this case, the Court need consider only whether the Georgia exemption-from-garnishment statute is preempted. The Court may leave to another day the question, which the Solicitor General raises, whether ERISA preempts state laws that permit garnishment. Nonetheless, if the Court were to consider whether state laws permitting garnishment are preempted by ERISA, the result would be the same. All state garnishment laws are excluded from preemption under Section 514(a) of ERISA because they have too tenuous an effect upon employee benefit plans and because they pertain only to benefits, not plans.

ARGUMENT

I. ERISA DOES NOT PREEMPT GEORGIA'S EXEMPTION-FROM-GARNISHMENT STATUTE AS APPLIED TO EMPLOYEE WELFARE BENEFITS.

State garnishment laws, including the Georgia statute at issue in this case, constitute an area of policy that the States traditionally have occupied. When Congress legislates in such a field, the Court starts "with the assumption that the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). "Preemption of state law by federal statute or regulation is not favored 'in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.'" *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981) (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963)). The importance of the clear-statement doctrine is heightened by the Court's recent decision in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), which overruled *National League of Cities v. Usery*, 426 U.S. 833 (1976), largely on the ground that there is adequate political protection of state sovereignty in the federal legislative process. The clear-statement doctrine ensures that those in Congress who would seek to protect state sovereignty receive clear notice when the language of pending legislation is intended to preempt state law.

ERISA contains no clear statement of a congressional intent to preempt state laws, such as that at issue here, which exempt employee welfare benefits from garnishment. First, the Georgia statute does not conflict with ERISA. Second, ERISA's preemption provision concerns only state laws that "relate to any employee benefit plan."

The Georgia exemption-from-garnishment statute is not such a law, because any effect that it may have upon employee benefit plans is too remote and tangential to "relate to" such plans and because it pertains to benefits rather than plans.

A. The Georgia Statute Conflicts With No Provision In ERISA.

The Georgia Supreme Court's decision was based on the court's conclusion that the Georgia statute "prohibits that which the federal statute permits and is therefore in conflict with it." Pet. App. A-4. But ERISA neither forbids nor requires a State to permit garnishment of employee welfare benefits. It is simply silent on the issue. Section 206(d)(1) of ERISA prohibits the assignment and alienation of pension plan benefits, but employee welfare benefit plans are expressly excluded from this provision, and ERISA provides no rule respecting garnishment of welfare benefits. 29 U.S.C. § 1056(d)(1); see also Section 201(1) of ERISA, 29 U.S.C. § 1051(1). By specifically addressing this aspect of the regulation of pension plan benefits, and remaining silent with respect to welfare plan benefits, Congress has indicated that it intends to leave the area of garnishment of welfare benefits unregulated under ERISA.[3]

By holding that States may not prohibit garnishment of employee welfare benefits, the Georgia Supreme Court in effect held that ERISA compels the States to permit the garnishment of such benefits. Such reasoning, however, turns ERISA into a highly intrusive law in the area of enforcement of money judgments, the regulation of

[3] This proposition follows from the maxim of statutory interpretation, "*expressio unius est exclusio alterius.*" To hold otherwise in this case would have the surprising consequence of requiring that employee welfare plans adhere to rules that are the mirror opposite of those governing pension plans simply because ERISA establishes a rule for pension plans that it does not impose on employee welfare plans.

which is far from ERISA's primary objective and which, furthermore, is an area of traditional state concern. Thus, the effect as well as the reasoning of the Georgia Supreme Court's decision discloses the court's error in concluding that Georgia's exemption-from-garnishment law is "directly contrary to an ERISA provision." Pet. App. A-4 n.4.

B. The Georgia Statute Does Not "Relate To" An Employee Benefit Plan Under Section 514(a) Of ERISA.

Section 514(a) of ERISA states that the Act preempts "any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan." 29 U.S.C. § 1144(a) (emphasis added).[4] Despite this Court's expansive interpretation of this provision, Section 514(a) is not without limitation. The Court has noted that "[s]ome state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' [an employee benefit] plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983). As an example of such state action, the Court in *Shaw* referred to *American Telephone & Telegraph Co. v. Merry*, 592 F.2d 118 (2d Cir. 1979). In that case, the Court of Appeals for the Second Circuit found that a state court's garnishment order had too remote an effect upon a pension plan to say that it "related to" the plan. Several other lower federal court and state court decisions involving garnishment have also held that Section 514(a) of ERISA does not preempt garnishment laws. *See, e.g., Local Union 212, IBEW Vacation Trust Fund v. Local 212, IBEW Credit Union*, 735 F.2d 1010, 1011 (6th Cir. 1984) (*per curiam*)

[4] Section 1144(a) reads in part as follows: "Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title."

(adopting the district court's holding that state garnishment laws involving funds in a vacation trust are not preempted by ERISA), *aff'g* 549 F.Supp. 1299 (S.D. Ohio 1982); *Electrical Workers v. IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154 (Mo. 1979).[5] If, as this Court indicated in *Shaw*, state statutes which *permit* garnishment of employee benefits have too tenuous and remote an effect upon employee benefit plans to be preempted, then, *a fortiori*, Georgia's statute *prohibiting* garnishment of employee welfare benefits must have too tenuous and remote an effect upon employee benefit plans to be preempted.

The ERISA preemption cases in which the "relate to" standard has been met further support the conclusion that garnishment laws affect employee benefit plans in too remote a manner to "relate to" the plans. For example, in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), the Court held that a New Jersey law regulating the offset of worker's compensation benefits against retirement benefits "related to" employee benefit plans. *Id.* at 524. The "relate to" standard was satisfied because this state law "eliminat[ed] one method for calculating pension benefits—integration—that is permitted by federal

[5] Congress amended ERISA in 1984 to provide that qualified domestic relations orders are excepted from ERISA's pension anti-alienation provision; hence garnishment of employee pension benefits to satisfy domestic relations obligations is not preempted. See Sections 206(d)(3) and 514(b)(7) of ERISA, 29 U.S.C. (& Supp. III) §§ 1056(d)(3), 1144(b)(7). Nevertheless, the garnishment cases cited in the text are still relevant to the issue in the case at hand. *Shaw* discloses the Court's belief that garnishment is an example of state action that has too tenuous an effect on employee benefit plans to "relate to" a plan under Section 514(a). *See* 463 U.S. at 100 n.21. A garnishment order to satisfy family support obligations does not "relate to" employee benefit plans any less than any other garnishment order. It is also important to note that when Congress revisited the anti-alienation provision (Section 206(d)(1), 29 U.S.C. § 1056(d)(1)), in 1984, it still chose to leave the area of garnishment of employee welfare benefits totally unregulated.

law." *Ibid.* A "calculation technique" of a pension plan is an integral aspect of the administration of the plan. *Id.* at 524-25. Similarly, in *Shaw v. Delta Air Lines*, *supra*, the Court found that New York's Human Rights Law and Disability Benefits Law "related to" employee benefit plans. 463 U.S. at 96. The Human Rights Law directly regulated the structure of employee benefit plans by prohibiting discrimination in the plans on the basis of pregnancy. *Id.* at 97. The Disability Benefits Law also directly affected the administration of employee benefit plans by requiring employers to pay employees specific benefits. *Ibid.* By contrast, Georgia's statute exempts employee welfare benefits from the operation of state garnishment procedures and, therefore, does not affect the administrative structure or impose any duties or burdens on the administrator of an employee benefit plan.

If, notwithstanding the foregoing, this Court were to find that Georgia's statute does "relate to" employee benefit plans, the Court would then have to discern what substantive rule ERISA requires with respect to garnishment. As explained above, however, ERISA prescribes no rule in the area of garnishment of employee welfare benefits. This void in ERISA's regulatory scheme creates the strong inference that garnishment-related state laws do not satisfy the "relate to" standard.

Because the Georgia statute does not "relate to" employee benefit plans, it is not preempted by Section 514(a).

C. The Georgia Statute Affects Employee Welfare Benefits, Rather Than Employee Benefit Plans.

A state law that pertains to employee benefits covered by ERISA does not necessarily relate to an employee benefit plan. Under Section 514(a), only state laws that relate to "plans" are preempted. The Georgia statute concerns only benefits.

In *Fort Halifax Packing Co. v. Coyne*, 107 S.Ct. 2211 (1987), discharged employees brought suit against their

employer claiming that the employer was required by a Maine statute to provide a one-time severance payment to certain employees in the event of a plant closing. The employer contended that the state statute was preempted by ERISA. This Court rejected the employer's argument, holding that the Maine statute was not preempted, "because the statute neither establishes, nor requires an employer to maintain, an employee welfare benefit 'plan' under [ERISA]." *Id.* at 2215.

Georgia's exemption-from-garnishment statute, like Maine's severance-pay statute, "neither establishes, nor requires an employer to maintain, an employee welfare benefit 'plan.'" Georgia's exemption-from-garnishment statute does not affect or interfere with any aspect of the regulation of an employee welfare benefit plan, such as plan reporting, disclosure, participation, funding, vesting, benefit calculation, or the trustee's fiduciary responsibilities. Instead, Georgia's statute simply provides protection from garnishment of "funds or benefits." See Ga. Code Ann. § 18-4-22.1 (1982). Under the holding of *Fort Halifax*, therefore, ERISA does not preempt Georgia's exemption-from-garnishment statute.

D. Preemption Should Not Be Implied In An Area Of Traditional State Concern.

Finally, it should be kept in mind that the preemptive effect of ERISA must be analyzed in the light of the strong presumption against federal preemption in areas of traditional and vital state concern. *See, e.g., Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Preemption doctrine has been carefully developed so that "'the federal-state balance' . . . will not be disturbed unintentionally by Congress or unnecessarily by the courts." *Jones v. Rath Packing*, 430 U.S. at 525 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)).

The enforcement of state court money judgments is an area of traditional state regulation. *See, e.g., Brown v. Liberty Loan Corp.*, 539 F.2d 1355, 1363 (5th Cir. 1976), *cert. denied*, 430 U.S. 949 (1977); *Electrical Workers v. IBEW-NECA Holiday Trust Fund*, 583 S.W.2d at 159. It is instructive that Rule 69 of the Federal Rules of Civil Procedure provides that "[t]he procedure on execution [of money judgments] . . . shall be in accordance with the practice and procedure of the state in which the district court is held . . . ." Fed. R. Civ. P. 69. Considering that (a) ERISA neither expressly forbids nor requires a State to permit garnishment of employee welfare benefit plans, (b) state exemption-from-garnishment statutes do not fall within the express language of Section 514(a), and (c) the legislative history of ERISA does not disclose any clear intent on this issue,[6] it cannot be inferred that Congress' "clear and manifest purpose" was to deprive the States of the power to regulate in this area of vital local concern. Lacking a clear statement of intent to preempt, ERISA should not be held to invalidate the Georgia statute at issue.

II. THE COURT NEED NOT ADDRESS THE ISSUE WHETHER ERISA WOULD PREEMPT A STATE LAW THAT PERMITS GARNISHMENT OF EMPLOYEE WELFARE BENEFITS.

The Solicitor General argues that the Court should consider the issue whether ERISA preempts state laws that permit garnishment of employee welfare benefits. This position contradicts one of the most basic rules governing the federal courts: A federal court should never "'formulate a rule of constitutional law broader than is required by the *precise facts* to which it is to be applied.'" *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 501-02 (1985) (quoting *United States v. Raines*, 362 U.S. 17, 21 (1960)) (emphasis added). "This Court, as is the case with all federal courts, 'has no jurisdiction to pronounce any statute, either of a State or of the United States,

---

[6] If anything, recent legislative history evinces a congressional desire to leave this area to the States. See *supra* note 5.

void, because irreconcilable with the Constitution, *except* as it is called upon to adjudge the legal rights of litigants in actual controversies.'" *Raines*, 362 U.S. at 21 (quoting *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39 (1885)) (emphasis added).

The case at hand raises only the issue whether Georgia's exemption-from-garnishment statute is preempted by ERISA, *not* whether some hypothetical state law permitting garnishment of employee welfare benefits is so preempted. The Court need not, and therefore should not, address the latter issue to decide the case before the Court.

III. IF THE COURT DECIDES TO ADDRESS THE ISSUE, IT SHOULD HOLD THAT ERISA DOES NOT PREEMPT STATE LAWS THAT PERMIT GARNISHMENT OF EMPLOYEE WELFARE BENEFITS.

If the Court were to consider whether state laws permitting garnishment are preempted, *amici* would submit that they are not. Under Section 514(a), all state garnishment laws are excluded from preemption for the reasons set forth in Part I of this brief. The absence of any congressional intent in ERISA either to permit or to prohibit garnishment of employee welfare benefits indicates that States are left with the authority to set policy regarding the garnishment of employee welfare benefits to enforce money judgments.

The regulatory scheme of ERISA reveals that Congress was especially concerned about the assignment and alienation of *pension plan* funds. Section 206(d)(1) prohibits the assignment or alienation of pension plan funds. 29 U.S.C. § 1056(d)(1). Congress expressly excepted employee welfare plans from Part II of ERISA, which contains Section 206. See Section 201(1), 29 U.S.C. § 1051(1) ("This part [Part II] shall apply to any employee benefit plan . . . other than—(1) an employee welfare benefit plan . . . ."). The Solicitor General is correct in

contending that the Georgia Supreme Court erred in determining that, by excluding employee welfare benefit plans from Section 206(d)(1), Congress intended to require the States to permit their garnishment. See Brief for the United States as *Amicus Curiae* on Petition for Writ of Certiorari [hereafter "U.S. Brief on Cert."] at 11. The Solicitor General is incorrect, however, in concluding that Congress' intent was to afford employee welfare benefits the same protection which has been afforded pension plan funds. See *id.* at 9. Neither the statute nor its legislative history indicates that employee welfare benefit plans were to be provided the same protection as pension plans.

ERISA specifically distinguishes "pension plans" from "employee welfare benefit plans" in several respects. See Sections 3(1) and 3(2)(A), 29 U.S.C. §§ 1002(1), 1002(2)(A). Although both types of plans are subject to reporting and disclosure requirements and fiduciary duties, the Act regulates pension plans far more extensively, imposing, in addition, minimum funding standards and minimum plan standards for participant eligibility and vesting.[7] This distinction between employee welfare benefit plans and pension plans is understandable; the loss of one's pension is likely to be much more detrimental than the loss of one's vacation pay. The strong inference to be drawn from ERISA's structure is that the appropriateness of garnishing employee welfare benefits is to be left to state law.

The Solicitor General argues that allowing States to permit garnishment of employee welfare benefits will create substantial burdens for the administrators of employee welfare benefit plans. See U.S. Brief on Cert. at 8-9. To be sure, a state statute allowing garnishment of employee welfare benefits may result in some administra-

---

[7] *See Franchise Tax Board v. Construction Laborers Vacation Trust*, 679 F.2d 1307, 1311 (9th Cir. 1982) (Tang, J., dissenting), *vacated on other grounds*, 463 U.S. 1 (1983).

tive expense to plan administrators who must process garnishment notices; however, this administrative cost is minimal. That a state statute may create some administrative cost is not in itself a sufficient reason to justify a finding of preemption. The Maine severance-pay statute at issue in *Fort Halifax* required the determination of the employees who qualified for the award, as well as the exact amounts owed to each employee, yet the Court concluded that ERISA did not preempt the Maine statute. *See* 107 S.Ct. at 2214. *A fortiori*, the minimal expense entailed by processing garnishment notices is not sufficient to justify a finding of preemption.

The Solicitor General also contends that garnishment of employee welfare benefits conflicts with provisions of ERISA governing fiduciary duties. See U.S. Brief on Cert. at 9-10. See generally Sections 403(c)(1) and 404(a)(1)(A), 29 U.S.C. §§ 1103(c)(1), 1104(a)(1)(A). According to the Solicitor General, "[p]ayment of plan monies to a creditor of a beneficiary violates [certain] ERISA restrictions and could subject the trustees to personal liability for breach of fiduciary responsibility." U.S. Brief on Cert. at 10. However, if a trustee pays monies to a creditor pursuant to a state court garnishment order, the trustee will be shielded from any liability. *See American Telephone & Telegraph Co. v. Merry*, 592 F.2d 118, 125 (2d Cir. 1979) ("It has long been the rule that fiduciary conduct is subject to judicial guidance and that a fiduciary acting pursuant to a court's instructions is protected from assertions of breach of duty."). Moreover, by paying a beneficiary's creditors, the trustee is in fact "providing benefits" on behalf of the beneficiary within the meaning of Section 403(c)(1).

Therefore, if this Court reaches not only the question whether Georgia's exemption-from-garnishment statute is preempted, but also whether state statutes that permit garnishment are preempted, the result is the same. Both

the language of Section 514(a) and the regulatory structure of ERISA as a whole indicate that state garnishment laws were not intended to be preempted. The regulated subject matter at issue in this case, the enforcement of money judgments, is an area of traditional and vital state concern which should not be superseded by federal law unless that was the clear and manifest purpose of Congress. In absence of any indication in ERISA or its legislative history of congressional intent to preempt, the Court should allow the States to continue to regulate the enforcement of money judgments in the area of employee welfare benefits.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of Georgia should be reversed.

Respectfully submitted,

ERIC B. AMSTUTZ
WALLACE K. LIGHTSEY
WYCHE, BURGESS, FREEMAN & PARHAM, P.A.
44 East Camperdown Way
Greenville, S.C. 29601
(803) 242-3131
Of Counsel

BENNA RUTH SOLOMON *
Chief Counsel
STATE AND LOCAL LEGAL CENTER
444 North Capitol St., NW
Suite 349
Washington, D.C. 20001
(202) 638-1445

* *Counsel of Record for* Amici Curiae

August 27, 1987

AMICUS CURIAE

BRIEF

No. 86-1387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JOHN H. MACKEY, *et al.*, *Petitioners*

v.

LANIER COLLECTION AGENCY AND SERVICE, INC.

On Writ of Certiorari
To The Supreme Court of Georgia

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE JUDGMENT BELOW

MAUREEN E. MAHONEY
Amicus Curiae, invited by Court Order of October 5, 1987
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2200

PRESS OF RAM PRINTING, HYATTSVILLE, MD 20781 (301) 864-6662

QUESTION PRESENTED

Whether § 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a), completely preempts state garnishment laws or only insofar as they purport to determine whether ERISA plans are subject to garnishment.

TABLE OF CONTENTS

Table of Contents Continued

TABLE OF AUTHORITIES

Table of Authorities Continued

Table of Authorities Continued

STATEMENT OF THE CASE

Proceedings in the Georgia State Courts

In this case, clients of the respondent extended credit to 23 longshore employees. The employees failed to pay the debts when due, requiring the respondent to obtain judgments against them. The employees then failed to pay the judgments. Although garnishment of wages is ordinarily available to creditors for the purpose of satisfying judgments, the garnishment of longshore workers can prove difficult because they ordinarily do not work for any one employer. These 23 employees, however, had earned accrued wages for holiday and vacation pay which were being held in an ERISA vacation fund. The creditors in this case sought to garnish a portion of the holiday and vacation wages payable to the employee debtors in order to finally satisfy the unpaid judgments.

The respondents accordingly served garnishment petitions on the trustees of the South Atlantic ILA/Employers' Vacation and Holiday Fund (the "Fund"). These proceedings were instituted in the state court of Chatham County pursuant to Ga. Code Ann. § 18-4-60 (1982). Under the Georgia procedure, garnishment is available "in all cases where a money judgment shall have been obtained in a court of this state or in a federal court sitting in this state", and "all property, money, or effects of the defendant in the possession or control of the garnishee . . . shall be subject to garnishment". Ga. Code Ann. § 18-4-60, § 18-4-20(c).[1] In conformance with standards established by Congress in the Consumer Credit Protection Act, Tit. II, 15 U.S.C. (and Supp. III) § 1671 et seq., however, the Georgia statute exempts 75% of any weekly disposable "earnings" of the debtor in the possession of the garnishee.[2]

---

[1] The Georgia statute excludes "collateral securities in the hands of a creditor" from garnishment where there is an amount owed on the debt for which the securities were given as collateral. Ga. Code Ann. § 18-4-20(c).

[2] Even less than 25% of the weekly earnings can be garnished depending upon the employee's weekly earnings relative to the federal minimum wage. *See* Ga. Code Ann. § 18-4-20(d)(1); 15 U.S.C. § 1673.

The trustees of the vacation plan filed an answer in state court objecting to the garnishment solely on the grounds that the Georgia legislature had provided an exemption from garnishment for "[f]unds or benefits of a pension, retirement, or employee benefit plan or program subject to [ERISA] . . . unless such garnishment is based upon a judgment for alimony or for child support". Ga. Code Ann. § 18-4-22.1 (1982); Answer of Garnishee, Joint Appendix at 10a. The trustees did not maintain that garnishment was improper because the plan included a clause preventing the alienation of benefits to creditors (commonly referred to as a "spendthrift clause") or that ERISA preempted the state garnishment procedure. Id. at 9a-10a. The record accordingly does not appear to include any evidence concerning the purposes for which the debts were originally incurred, or whether the Trust Agreement in fact had been interpreted to prevent the alienation of benefits to creditors.[3]

Presented with this dispositive issue of law, the trial court ruled that the garnishment should be permitted. Appendix to Petition for Certiorari ("Pet. App.") at A11-A21. The decisions of the Georgia courts are described in the briefs of the petitioners and the United States. The Supreme Court ultimately affirmed the garnishment awards. Although the Court found that § 18-4-22.1 of the Georgia statute had to be construed to exempt all ERISA plans from garnishment, it nevertheless held that this section of the Georgia statute was preempted by § 514(a) of ERISA, 29 U.S.C. 1144(a), because ERISA permitted garnishment of welfare benefit plans. Pet. App. at A-4.[4]

---

[3] It is undisputed, however, that the judgments did not arise from alimony or child support obligations. (Pet. App. at A6).

[4] Although legislative history relied upon by the trial court certainly indicated that the Georgia legislature did not intend to provide protection to employees from creditor claims which was any greater than that mandated by ERISA, the state court construction of the statute is conclusive and not subject to review of this Court. *See Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, 120 (1924).

Proceedings Before This Court

On February 17, 1987, the trustees filed a petition for a writ of certiorari to review the judgment of the Georgia Supreme Court based solely upon the trustees' assertion that the Georgia statute exempting ERISA plans from garnishment was not preempted by ERISA. Pet. at 9-10.[5] At the request of this Court, the United States filed an amicus in support of the petition for writ of certiorari, contending that ERISA preempted state garnishment laws in their entirety. *See* Brief of the United States in Support of the Petition for Certiorari at 7.

Certiorari was granted on June 22, 1987, and petitioners now, for the first time, assert that the terms of the Trust Agreement governing the Fund precluded the garnishment of benefits for satisfaction of creditor claims and that ERISA intended to permit the enforcement of such clauses through the total preemption of state garnishment procedures. Brief of Petitioners at 17; Brief of the United States at 3 (characterizing the plan as a "spendthrift trust"). The Trust Agreement was submitted to this Court for review as an appendix to Petitioners' Brief. Brief of Petitioners at Appendix A.

The Trust Agreement includes a number of terms of potential significance to this Court's resolution of the issues presented. Employers in the bargaining unit are obligated to make payments to the Fund in order to defray the cost of providing "holiday and vacation benefits" to longshore workers. Brief of Petitioners at 1a. The employees' entitlement to holiday and vacation pay are contingent, however, upon rendering services in excess of 700 hours per year. The compensation is paid to the employees in a lump sum at the end of the year regardless of

---

[5] The trustees again did not rely upon the inclusion of any spendthrift term in the vacation plan and affirmatively contended that "ERISA expressly excludes welfare plans from the protection against alienation of pension benefits". The petitioners limited the question presented for review to one of whether or not the Georgia statutory exemption for ERISA plans was preempted. (Pet. at 8.)

whether they actually take vacation time or holidays, and the employees have a right to collect payment of the compensation as of the date on which the entitlement becomes payable. Brief of Petitioners at 4a-9a. The clause which the trustees and the United States have characterized as a "spendthrift" clause, simply provides that the fund shall not be liable for the "debts, contracts or liabilities" of any party other than the Fund.[6] *See* Brief of the United States at 3; Brief of Petitioner at 17.

The respondent has not filed a brief on the merits in opposition to the petitioners. This amicus brief is submitted in support of the judgment below at the request of the Court by Order of October 5, 1987.

SUMMARY OF ARGUMENT

The longshore employees involved in this case have failed to pay judgments due to the respondent for more than three years now. They nevertheless have accrued wages available to satisfy these claims in the vacation fund managed by petitioners. The employees' interest in spending this money for some other purpose should not be given priority over the employees' obligation to pay judgments rendered by a court. The only equitable result in this case is to affirm the decision below and to permit the satisfaction of the judgments in issue from the employees' accrued vacation pay in accordance with generally applicable garnishment procedures. It is also the only result permitted by the language and purposes of ERISA.

In order to reverse the judgment below and prohibit the garnishment in issue, this Court would otherwise have to find

---

[6] The clause, reprinted in petitioners' brief at 18a, provides in full:

> No eligible employee shall have any right, interest or title to the Fund or any part thereof except to the extent that such employee is entitled to benefits provided by the Trustees hereunder. The monies paid or to be paid into said Fund shall not be liable for or subject to the debts, contracts or liabilities of the employer collective bargaining associations, the employers, employees, beneficiaries or the Union or its affiliated Locals.

that (1) the substantive provisions of ERISA were intended to protect welfare plan beneficiaries from the claims of creditors, or that; (2) Congress nevertheless intended § 514(a) of ERISA, the preemption provision, either; (i) to permit Georgia to decide to extend such protection even where Congress did not, or; (ii) to preempt state garnishment procedures in their entirety simply to avoid the imposition of burdens on plan administration. ERISA simply does not permit any such findings.

The substantive provisions of ERISA were not intended to protect employees from creditors' claims against non-retirement earnings or to permit the enforcement of "spendthrift" clauses in welfare benefit plans. First, Congress provided that welfare benefit plans can "sue and be sued", § 502(d)(1), 29 U.S.C. § 1132(d)(1), and this Court has held in analogous circumstances that the Congressional use of this term creates a strong presumption that Congress intended to permit "all civil processes incident to the commencement or continuance of legal proceedings" and that "garnishment and attachment, are part and parcel of [that] process." *FHA Region No. 4* v. *Burr*, 309 U.S. 242, 246 (1940); *Franchise Tax Board of California* v. *United States Postal Service*, 467 U.S. 512 (1984). Second, in order to overcome this presumption, Congress expressly protected pension plans from the claims of judgment creditors and provided that this substantive term of ERISA did not apply to welfare benefit plans. § 206(d)(1), 29 U.S.C. § 1056(d)(1); § 201(1), 29 U.S.C. § 1051(1). Third, an important Congressional purpose under ERISA was to ensure that retirement benefits would actually be available to employees during the years in which they could no longer work, which led to the enactment of a series of protective provisions including minimum funding and vesting requirements. These requirements were not extended to welfare benefit plans, however, because the primary Congressional purpose in regulating these plans was to prevent trustee mismanagement of funds—a purpose which is not in any way implicated by a construction of ERISA permitting benefits to be paid to creditors in satisfaction of the

employees' unpaid judgments. Fourth, there is also no basis to believe that Congress would have intended to exempt vacation and holiday pay from garnishment, because these "benefits" are indistinguishable from wages, and when Congress enacted the Consumer Credit Protection Act, 15 U.S.C. § 1671 et seq., for the purpose of limiting the total amount of wages which could be garnished, it permitted garnishment of vacation pay to the same extent as other wages.

Finally, if there were any uncertainty as to the intention of Congress, the issue must be resolved "in light of the . . . powers of trustees under the common law", *Central States* v. *Central Transport, Inc.*, 472 U.S. 559, 571 (1985), because the issue is one which this Court has already recognized "comes within the class of questions for which Congress intended that federal courts create federal common law." *Franchise Tax Board* v. *Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 26 (1983). The creditors in this case would have been entitled to recover the trust funds in issue because it has not been established that there in fact is a spendthrift clause in the plan, one common law prerequisite to defeating a creditor's claim, and, even if there were, it would have been unenforceable because the benefits were placed in trust in consideration for the services rendered by the employee. *See Nichols* v. *Eaton*, 91 U.S. 716, 727 (1875).

The preemption clause of ERISA, § 514(a), also must be read to permit the garnishment ordered in this case. The Congressional decision to preempt all laws which "relate to" ERISA plans preempts the section of the Georgia statute extending substantive protection from creditors' claims to the beneficiaries of ERISA welfare benefit plans because the statute, by its very terms, is applicable only to the "garnishment of funds . . . which are subject to [ERISA]", and therefore must be found to "relate to an employee benefit plan". The statutory section makes a direct "reference" to ERISA plans, *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983), and actually conflicts with ERISA by providing express protection where

Congress provided none. *See Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981).

The underlying garnishment procedures should not be found to "relate to" welfare plans, however. First, procedures in aid of execution of judgments, including garnishment, are "procedures", *see* Federal Rule of Civil Procedure 69, and the Congressional determination to preserve concurrent jurisdiction for certain cases under ERISA, § 502(a), 29 U.S.C. § 1132(a), demonstrates that laws which "relate to" employee benefit plans under the preemption clause cannot include state procedures of general application not actually in conflict with the substantive provisions of ERISA. Second, § 514(a) should not be found to apply to garnishment in this case, because such a construction would necessarily preclude the availability of procedures, state or federal, for executing *any* judgment against an ERISA fund. There is no linguistic means to find that garnishment or attachment laws "relate to" benefit plans when they are invoked by creditors of beneficiaries, but not when they are invoked by beneficiaries or creditors of the fund itself. Yet, if state procedures in aid of execution of judgments are preempted, then there would be no procedures available to enforce judgments against plans because federal courts do not have any statutory, procedural, or implied common law powers to create remedies in aid of execution of judgments. See Federal Rule of Civil Procedure 69; *Huron Holding Corp.* v. *Lincoln Mine Operating Co.*, 312 U.S. 183 (1941). Third, § 514(a) should not be read to preempt state garnishment laws because this would render part of § 206(d) superfluous, since there would have been no need for Congress to expressly preclude the involuntary alienation of pension benefits in § 206.

Finally, a determination that garnishment procedures are not preempted by § 514 is consistent with the Congressional purpose of preventing the burdens of conflicting state regulation on benefit plans. Every "burden" identified by the trustees is either (1) eliminated by the creation of uniform substantive law and the preemption of state law governing the enfor-

ceability of spendthrift clauses; (2) a function which the trustees would have to perform in the course of administering the trust in any event; or (3) a burden no greater or different than that imposed by having to respond to litigation generally: a burden expressly foreseen and permitted by Congress. The judgment below should be affirmed.

ARGUMENT

The Georgia Supreme Court found that creditors were entitled to satisfy unpaid judgments by garnishing wages which had accrued to the debtors in an ERISA vacation fund even though a Georgia statute purported to preclude garnishment of ERISA plans. The decision of the Georgia Supreme Court should be affirmed because it properly construed Congressional intent under ERISA. First, an examination of the substantive provisions and purposes of ERISA demonstrates that the Act was not intended to provide beneficiaries of welfare benefit plans protection from claims of judgment creditors and would preclude the enforcement of any spendthrift clause in this case. Second, since Congress did not intend to protect beneficiaries of welfare plans from creditors, § 514(a) of ERISA, 29 U.S.C. 1144(a), must be read to preempt state laws extending such protection, but to preserve the underlying procedures for enforcement of judgments established by state law. Such procedures do not impermissibly burden ERISA plans.

I.

ERISA WAS NOT INTENDED TO PROVIDE BENEFICIARIES OF WELFARE BENEFIT PLANS PROTECTION FROM CLAIMS OF JUDGMENT CREDITORS AND PRECLUDES THE ENFORCEMENT OF ANY SPENDTHRIFT CLAUSE IN THIS CASE

A central question presented in this case, and one which has not been directly addressed by the petitioners or the United States, is whether Congress intended to protect welfare benefits, including vacation pay, from claims of creditors of employees who have not only failed to pay their debts when due, but

have also failed to pay judgments when entered. Since welfare benefits subject to ERISA encompass a significant component of employee earnings, including wages paid for holidays, vacations, severance, and bonuses, generally without regard to whether those payments are made from a trust fund or simply out of the general assets of the employer, the issue is one of substantial significance. ERISA §§ 3(1) and 3(2)(B), 29 U.S.C. §§ 1002(1) and 1002(2)(B).[7]

This Court has already recognized that the question of whether welfare benefits subject to ERISA can be insulated from creditors is one which "comes within the class of questions for which Congress intended that federal courts create federal common law." *Franchise Tax Board*, 463 U.S. at 26 (1983).[8] Since this Court found that an ERISA trustees' "power to comply with a state levy" is "a matter of concern under ERISA", there can be no question but that the obligation to comply with a garnishment order in this case must also be answered through reference to federal rather than state law. *Id.* at 26 n.30.[9]

---

[7] Even 20 years ago, the Department of Labor found that more than 5% of total employee compensation in the private non-farm economy was attributable to vacation and holiday pay. Pension Plan Guide (CCH) at ¶ 7475.

[8] Contrary to the suggestion of the United States in its brief at 17, this Court did not endorse the view that garnishment is preempted in that case. This Court found that the case had been improperly removed to federal court, and held that, "we express no opinion as to whether ERISA forbids the trustees to comply with the levies in this case or otherwise preempts the State's power to levy on funds held in trust." 463 U.S. at 26 n.30.

[9] *See also, Pilot Life Insurance Co.* v. *Dedeaux*, ____ U.S. ____, 107 S.Ct. 1549, 1551, 1557-58 (1987) (holding that ERISA "comprehensively regulates . . . employee welfare benefit plans" and intends for the courts to develop a "body of federal substantive law"; *Central States*, 472 U.S. at 569 n.9, 570 (1985) (holding that despite the Congressional focus on pension plans, Congress intended the

Federal substantive law under ERISA must be developed through an "examination of the structure of ERISA in light of the particular duties and powers of trustees under the common law". *Central States*, 472 U.S. at 571. Following these principles of construction, this Court should construe federal substantive law to preclude the enforcement of spendthrift clauses because (1) "an examination of the structure of ERISA" establishes that Congress did not intend to insulate wages held in a vacation fund from the claims of judgment creditors; and (2) the "powers of trustees under the common law" did not include the power to protect wages, such as vacation and holiday pay, from creditors of the beneficiary. *Central States*, 472 U.S. at 578.

A. The Language And Purposes Of ERISA Demonstrate That Congress Did Not Intend To Protect Wages Held In Welfare Benefit Plans From Claims Of Judgment Creditors

Since federal substantive law under ERISA must be developed in light of a "common sense view of the words" used by Congress and through reference to the "object and policy" of the law, *Pilot Life Insurance*, 107 S.Ct. at 1554, it is first necessary to attempt to derive the answer to the issue presented from the statute itself. In this case, it is apparent from the statute itself that Congress did not intend to protect welfare benefits from the claims of creditors, particularly in the circumstances of this case.

1. Congress provided that welfare benefit plans can "sue and be sued"—a term which this Court has previously construed to include remedies for the enforcement of judgments

Section 502(d)(1) of ERISA provides that employee benefit plans can "sue or be sued", 29 U.S.C. § 1132(d)(1), and this

courts to develop federal common law governing welfare plans as well); H.R. Cong. Rep. No. 2, 93rd Cong., 2d Sess. (remarks of Sen. Javits) (1974) (stating that Congress intended "a body of federal substantive law be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans").

Court has recognized that even though Congress has preempted certain causes of action, it has not provided ERISA plans immunity from suit. *See Franchise Tax Board*, 463 U.S. at 26. There is accordingly a strong "presumption", applied by this Court when Congress has provided that an entity can "sue and be sued", that this phrase was intended to permit "all civil processes incident to the commencement or continuance of legal proceedings" and that "garnishment and attachment, are part and parcel of [that] process." *FHA, Region No. 4* v. *Burr*, 309 U.S. 242, 245-46 (1940) (upholding a garnishment action instituted against the FHA); *Franchise Tax Board of California* v. *United States Postal Service*, 467 U.S. 512 (1984) (same).[10]

This presumption can only be overcome if it is otherwise "clearly shown" that garnishment of welfare plans is not "consistent with the statutory or constitutional scheme." *Burr*, 309 U.S. at 245; *United States Postal Service*, 467 U.S. at 518. The other terms of ERISA and its purposes do not overcome the presumption recognized by this Court in *Burr* and *United States Postal Service:* they in fact confirm that the presumption adopted by this Court is a valid gauge of Congressional intent.

[10] In *Burr*, the federal agency maintained that the Congressional authorization to "sue and be sued" was limited to suits relating to actions taken by the agency under the provisions of the Act and that garnishment had no relationship to the agency's duties under the Act. 309 U.S. at 247-48. This Court found that since the FHA could be sued by an employee for wages due the employee, it should also be implied that Congress intended to permit a creditor to "reach that claim through a writ of garnishment" because the "end result is simply to allow a suit for the collection of a claim on which Congress expressly made [the FHA] suable". Similarly, there is no question that a benefit plan is subject to suit by beneficiaries for payment of wages held in trust and the words "sue or be sued" in ERISA should accordingly be construed to include actions by judgment creditors for collection of these wages.

2. Congress expressly protected pension plans from judgment creditors' claims and excluded welfare benefit plans from such protection

The presumption in favor of creditors' remedies recognized by this Court in *Burr* and *United States Postal Service* was expressly overcome by Congress with respect to *pension plans* subject to ERISA. In § 206(d)(1) of the Act, 29 U.S.C. § 1056(d)(1), Congress provided that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated" and specifically excluded welfare plans from this provision. Section 201(1), 29 U.S.C. § 1051(1). The obvious care with which the various provisions of ERISA were drafted to include welfare plans in certain circumstances and exclude them in others, militates against a finding either that the exclusion of welfare plans in this instance was an oversight, or that these plans are subject to an implied anti-alienation provision. *See Massachusetts Mutual Life Insurance Life Co.* v. *Russell*, 473 U.S. 134 (1985) ("the presumption that a [term] was deliberately omitted from a statute is strongest when Congress has enacted a comprehensive legislative scheme".) This Court's decision in *Alessi* also indicates that the decision to preclude creditors from access to pension benefits makes it "most reasonable to infer that" by failing to extend similar protection from creditors' remedies to welfare plans, "Congress acknowledged and accepted the practice, rather than prohibiting it". 451 U.S. at 516.

The legislative history of ERISA confirms that the anti-alienation provision covers only pension plans and that at no stage did Congress understand welfare plans to be included within its purview. Thus, the Committee on Ways and Means Report states that the purpose of the anti-alienation provision is to "ensure that the employees' accrued benefits are actually available for *retirement* purposes". H.R. 12481, No. 93-779 at 66, 93rd Cong., 2d Sess. (1974) (emphasis added).[11] No mention is made of welfare benefits.

[11] Similarly, with respect to the amendments to § 206(a) in the Retirement Equity Act of 1984, the Committee Report states that the purpose of the amendments is "to improve the delivery of *retirement* benefits and provide for greater equity under private *pension* plans." Report on H.R. 4280, No. 98-655, Part I at 21, 98th Cong., 2d Sess. (1984) (emphasis added).

3. The provisions in ERISA requiring trustees to expend funds "for the exclusive purposes of providing benefits" supports, rather than negates a Congressional intent to subject welfare benefits to claims of creditors

Under § 403(c)(1) of ERISA, 29 U.S.C. § 1103(c)(1), a trustee is required to hold and expend trust funds "for the exclusive purposes of providing benefits". The United States relies heavily upon this language to support its claim that Congress precluded the payment of benefits to creditors of beneficiaries, reasoning that a payment to a "general creditor . . . is not made for the purpose of providing benefits". Brief of the United States at 11. This language, however, is similar to language contained in the Internal Revenue Code of 1954, § 401(a), which had been construed to permit garnishment of trust benefits.

Section 401(a) of the Code provided certain tax benefits to employer trust funds if the funds were held for the exclusive benefit of the employees. In Revenue Ruling 56-432, 1956-2 C.B. 284, the IRS reasoned that "the repayment of a loan for an employee is for the economic benefit of the employee since it relieves him of a liability." A trust could accordingly qualify under the Code even without the inclusion of a spendthrift clause because "the benefit to the creditor is only incidental." Id. This Court has recognized that it is appropriate to give weight to the practice of the Internal Revenue Service prior to the enactment of ERISA in interpreting the scope of similar provisions included by Congress in the Act. *See Alessi*, 451 U.S. at 518-19.

The construction of § 403(c)(1) advanced by the United States is also flawed because it would preclude other types of payments which the United States presumably would not contend are unauthorized under ERISA. Payments to voluntary assignees of welfare benefits, payments made pursuant to qualified domestic relations orders, and payments made to the IRS for federal tax levies, are no more payments of "benefits" than payments to judgment creditors. *See Quin* v. *IRS*, 84-1 U.S.T.C. ¶9337 (E.D.L. 1984) (rejecting claim by trustee of vacation fund that it would be a breach of fiduciary duty to satisfy an IRS levy for taxes owed by a beneficiary from plan funds.)

4. The Congressional policy of ERISA with respect to the regulation of welfare plans was to protect beneficiaries from trustee abuses and not to protect them from the adjudicated claims of creditors

Recognizing the paramount need to have retirement benefits available to employees for their use when they are no longer working, Congress enacted minimum funding provisions, vesting requirements, and restrictions on alienation. 29 U.S.C. (and Supp. III) 1051-86. In contrast to the policy concerns and legislative solutions adopted for pension plans, Congress found that the problems with welfare benefits, which are simply "a means of compensating workers in lieu of increased wages," S. Rep. No. 127, 93rd Cong., lst Sess. 3 (1973), were trustee mismanagement of such funds and failure to pay employees the benefits promised.[12] These problems warranted coverage under the ERISA provisions governing fiduciary responsibilities, but not the provisions governing funding, vesting, and alienation. Thus, the Congressional purpose in regulating welfare benefit funds—to prevent trustee mismanagement and abuses—is not in any way implicated by a construction of

[12] *See, e.g.*, 120 Cong. Rec. 4279-80 (1974) (statement of Rep. Brademas); 120 Cong. Rec. 4277-78 (1974) (statement of Rep. Perkins); 119 Cong. Rec. 30003 (1973) (statement of Sen. Williams).

ERISA permitting employee benefits to be paid to creditors in satisfaction of the employees' unpaid judgments.[13]

5. Other Federal Law supports the conclusion that Congress did not intend to insulate vacation and holiday benefits from claims of creditors

Any ruling in this case that the vacation wages in issue are not subject to claims of creditors would be at odds with other federal law in two respects. First, such a ruling would result in discrimination against employees whose vacation and holiday benefits are paid from the general payroll and those whose benefits are paid from a trust fund established for payment of such benefits. Second, this construction of congressional intent would be inconsistent with the conclusions reached by Congress in enacting the Consumer Credit Protection Act.

First, extending protection from creditor claims in this case would provide an unwarranted preference over other American workers in the following manner. The Department of Labor has promulgated a regulation, 29 C.F.R. § 2510.3-1(b), providing that the "payment of compensation while an employee is on vacation or absent on a holiday" made "out of the employer's general assets" should not be construed to be a welfare plan within the meaning of ERISA. The Labor Department explained its regulation by stating that "the abuses which created the impetus for the reforms" under ERISA were not implicated by paid vacations or holiday payments because "they are associated with regular wages or salary, rather than benefits triggered by a contingency such as hospitalization". 40 Fed. Reg. 24, 642-43 (1975). In order to prevent trustee abuses, however, vacation and holiday funds paid out of a trust established by the employer or an employer unit, would remain subject to ERISA. *See* 29 C.F.R. § 2510.3-1(b)(3).

[13] The question of whether or not Congress would have intended to prohibit such actions because of the burdens they would impose upon plan administration is discussed *infra* at 27-30.

The result of this differentiation, under the construction of ERISA advanced by the United States in this case, would be to permit garnishment of holiday and vacation payments made out of an employer's general fund since such plans would not be subject to ERISA regulation, while precluding garnishment of payments made for vacations and holidays out of a trust fund. Since the vast majority of workers are paid vacation wages out of the employer's general assets, and only employees working in "industries characterized by a high degree of seasonal or irregular employment or by frequent job changes, such as construction, apparel and maritime" are likely to have benefits paid from trust funds, only a limited number of employees will actually obtain the right to protect vacation payments from garnishment.[14] Yet, there is no basis whatsoever to believe that Congress only intended to protect the vacation pay of the employees whose funds were placed in trust. The better construction is that Congress intended no such protection for any employee, which is implicit in the Department of Labor's finding that the purposes of ERISA would not be frustrated by excluding vacation plans from ERISA's coverage.[15]

Second, the terms of the Consumer Credit Protection Act establish that Congress did not choose to afford vacation pay

---

[14] Pension Plan Guide (CCH) ¶ 7485. In a 1966 study by the Department of Labor, only 132 such trust funds were discovered. Id. *See also, Franchise Tax Board*, 463 U.S. at 5 n.2 (noting that the vacation trust in issue in that case was established because construction laborers "typically work for several employers during the course of a year.")

[15] Even if the Department of Labor regulation improperly exempts vacation and holiday payments made from general assets from ERISA's coverage, garnishment of those funds might still occur as a practical matter. Otherwise, an employer subject to a wage garnishment action who pays vacation and holiday payments as part of its regular payroll to its employees, would have to distinguish between wages paid to employees during weeks in which they were on vacation or holiday, and all other weeks.

any greater protection from claims of creditors than that afforded to other wages. Congress specifically reviewed the issue of garnishment of employee wages and enacted those limitations on garnishment which it thought were necessary to protect employee interests. *See* 15 U.S.C. § 1671.[16] Since Congress did not make any distinction between wages paid for vacations and those which were not,[17] Congress apparently did not believe that there was any basis to provide greater protection to wages earned while on vacation than wages earned while working. ERISA should not be found to impliedly extend the protection which the Consumer Credit Protection Act declined.

B. Interpreting ERISA To Preserve Claims of Creditors Against Welfare Benefit Trusts Is In Accordance With Common Law Principles

Since Congress has rather clearly indicated that ERISA was not intended to protect welfare benefits from claims of creditors, a review of common law principles is not necessary. Nevertheless, these principles, which this court has invoked where Congressional intent is not clear, *see Central States*, 472 U.S. at 570, establish that the beneficiaries in this action would not be protected at common law from creditors' claims against their vacation and holiday wages held in trust.

First, funds held in a trust which does not include a spendthrift clause limiting the payment of benefits to creditors were always subject to creditors' claims, regardless of the purpose of

---

[16] These protections essentially prohibit state garnishment in excess of 25% of the employee's weekly disposable earnings or by an amount equal to 30 times the minimum wage. States are free to establish more protective limitations, however. 15 U.S.C. § 1677.

[17] The Act defines "earnings" as "compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise . . ." 15 U.S.C. 1672. This language clearly encompasses vacation pay. *See Riley* v. *Kessler*, 441 N.E.2d 638 (Oh. 1982).

the trust. G. Bogert & G. Bogert, Law of Trusts and Trustees § 193 at 492 (2d. ed. 1980) (hereinafter "Bogert"). The record in this case does not permit the conclusion that the trust fund in issue included a spendthrift clause.[18]

Even if this Court assumes that the vacation trust in issue was intended to be a spendthrift trust, the spendthrift provision would nevertheless have been unenforceable at common law. Although the American common law generally permitted donors of property to establish spendthrift trusts insulating their gifts from the beneficiary's creditors, the common law would not enforce a spendthrift clause included in a trust

---

[18] The trustees of the plan did not rely upon this theory below and should be deemed to have waived it. *See, e.g., Franchise Tax Board*, 463 U.S. at 22 n.24 (refusing to consider an argument based upon a theory of pleading not raised below). *Universe Tankships, Inc.* v. *U.S.*, 528 F.2d 73 (3rd Cir. 1975) (holding that a party cannot change a theory on appeal where it offered no evidence to support that theory). In addition, the language relied upon in the plan set forth *supra* at 4 n.6, in fact does not include the terms commonly used in spendthrift clauses. *See e.g.*, 26 C.F.R. § 1.401(a)-13 (wherein the IRS established that in order to comply with the ERISA provision mandating an anti-alienation clause for pension benefits the plan must provide that benefits "may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution, or other legal or equitable process"); *Franchise Tax Board*, 463 U.S. at 4 n.3 (quoting clear anti-alienation provision in trust). In any event, if this Court were to find that such a clause could be enforceable, it should at a minimum remand the case to the Georgia courts to permit factual development on the question of whether this clause in fact represented a spendthrift clause, since the manner in which the clause has been interpreted is "an important factor" in trust construction, as recognized in *Adcock* v. *Firestone Tire and Rubber, Co.*, 822 F.2d 623, 626 (6th Cir. 1987). *See Merchants National Bank* v. *Richmond*, 256 U.S. 635, 638 (1921) (remanding case after reversal for error of law to permit factual development in state court). A remand is unnecessary, however, since the judgment of the Georgia Supreme Court should be affirmed even if it is assumed that the clause relied upon was intended to operate as a spendthrift clause.

established by a settlor in exchange for consideration. The reasoning adopted by this Court in *Nichols* v. *Eaton*, 91 U.S. 716 (1875), indicated that a spendthrift clause included in such a trust would not be enforceable because the benefits were not given "without any pecuniary return." 91 U.S. at 727. There can be no question that the vacation and holiday benefits in issue are not being donated to the beneficiary as a gift, but are being paid for "pecuniary return" in the form of services rendered.[19] Although the common law prior to ERISA had begun to recognize a public policy basis for enforcing spendthrift clauses in pension plans in order to assure the availability of those funds at a time when the employees would be unable to work—the same policy which Congress adopted under ERISA —no such policy exception had been or should be developed to protect vacation and holiday wage payments.[20] This Court should accordingly conclude, as have numerous other courts which have reviewed the issue,[21] that Congress did not intend

---

[19] Courts in numerous contexts have recognized that vacation pay is indistinguishable from ordinary wages. *See, e.g., Franchise Tax Board*, 463 U.S. at 4 n.2 (stating that payments to a vacation fund were "part of the hourly compensation" due employees); *Lines* v. *Frederick*, 400 U.S. 18, 20 (1970) (for purposes of Bankruptcy Act, accrued vacation pay is a "part of [employees'] wages").

[20] *See, e.g., Thomas* v. *Thomas*, 192 Cal. App. 2d 771, 780 (1961) ("[T]here would seem to be a policy in this state which favors the enforceability of clauses protecting retirement benefits from the claims of creditors"). *Compare, Laborers Union Local 1298* v. *Frank L. Lyons & Sons, Inc.*, 323 N.Y.S. 2d 229 (1971) (vacation benefits could be garnished to same extent as wages when such benefits became transferable despite existence of spendthrift provision of trust agreement). *See also, Electrical Workers Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W. 2d 154, 162 (Mo. S.Ct. 1979) (distinguishing cases upholding spendthrift clauses as dealing with pension, as opposed to vacation, funds.)

[21] *See, St. Paul Fire & Marine Ins. Co.* v. *Cox*, 752 F.2d 550, 552 n.3 (11th Cir. 1985); *Local Union 212, IBEW Vacation Trust Fund* v. *Local 212, IBEW Credit Union*, 735 F.2d 1010 (6th Cir. 1984) (per

to protect welfare plans, or vacation and holiday plans in particular, from creditors' claims.[22] Even though it cannot be said that Congress intended to affirmatively protect beneficiaries of welfare plans from claims of creditors, it is nevertheless still necessary to determine whether Congress achieved the same effect through the operation of the preemption clause in order to prevent burdens on the plans.

II.

SINCE CONGRESS DID NOT INTEND TO PROTECT BENEFICIARIES OF WELFARE PLANS FROM CREDITORS, § 514(a) OF ERISA MUST BE READ TO PREEMPT STATE LAWS EXTENDING SUCH PROTECTION AND TO PRESERVE PROCEDURES FOR THE ENFORCEMENT OF JUDGMENTS ESTABLISHED BY STATE LAW

A. Section 18-4-22.1 Of The Georgia Code, Protecting ERISA Plans From Garnishment Is Preempted By § 514(a) Because It Is A Law Which Relates To Employee Benefit Plans

In order to establish a uniform set of laws regulating pension plans, ERISA adopted a very broad preemption provision

curiam), *aff'g* 549 F.Supp. 1299, 1302 (S.D. Ohio 1982); *Electrical Workers, Local No. 1 Credit Union* v. *IBEW-NECA Holiday Trust Fund*, 583 S.W.2d 154, 159 (Mo. 1979); *First National Bank of Commerce* v. *Latiker*, 432 So.2d 293, 296 (La. Ct. App. 1983).

[22] Although it appears relatively clear that Congress intended to permit creditors' claims directed at any benefit plan other than pension plans, this Court could decide that vacation and holiday benefits can be garnished without resolving the question or whether Congress may have intended federal common law to preclude garnishments of other types of benefit plans, depending upon the circumstances of the case. At common law, for example, even otherwise enforceable spendthrift clauses would not be enforced for credit extended for the payment of necessities, or for tax payments due to the state or federal governments. *See generally*, Bogert at § 224.

displacing "any and all state laws insofar as they may now or hereafter relate to any employee benefit plan". Section 514(a), 29 U.S.C. § 1144(a). Virtually all of the factors which this Court has considered in resolving more difficult preemption issues establish that the Georgia statutory section in issue is preempted.

First, the Georgia statute, by its very terms, is applicable only to the "garnishment of Funds . . . subject to [ERISA]" Ga. Code Ann. § 18-4-22.1, and therefore must be found to "relate to an employee benefit plan". The statute not only has a "connection with" but makes a direct "reference" to ERISA plans. *Shaw*, 463 U.S. at 97. While this Court recognized in *Pilot Life Insurance* that "preemption *is not limited to* state laws specifically designed to affect employee benefit plans", it certainly includes all laws such as that in issue, which are "specifically designed to affect employee benefit plans". 107 S.Ct. at 1553 (emphasis added).

Second, even if the literal language were not sufficient to resolve the issue, preemption is also appropriate because the Georgia statute purports to regulate issues within the scope of the "body of federal substantive law" which Congress intended for federal courts to develop. *Pilot Life Insurance*, 107 S.Ct. at 1557-58. As set forth *supra* at 9, the availability of creditors' remedies to enforce judgments against plan assets is one which this Court has already determined was within the boundaries of the federal substantive law to be developed. Since Congress did not intend to protect plan assets from creditor claims, a state law which provides such protection is preempted because, as in *Alessi*, it "eliminates" a remedy "permitted by federal law". 451 U.S. at 524.[23]

[23] The fact that the legislation is protective of ERISA plans does not alter the preemption analysis. Even laws which are "consistent with ERISA's substantive requirements" are preempted. *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985).

Finally, preservation of the state's protective legislation would be inconsistent with the primary purpose of the preemption clause—to create uniform substantive laws governing the interpretation of plans. *See Pilot Life Insurance*, 107 S.Ct. at 1557-58. These principles of uniformity are satisfied by establishing a federal substantive law governing the enforceability of spendthrift provisions in trusts subject to ERISA. The Georgia Supreme Court was accordingly correct in its determination that the Georgia exemption from garnishment for ERISA plans was preempted.[24]

B. Congress Did Not Intend To Preempt Procedures Established By State Law For the Execution Of Judgments

The United States and the petitioner maintain that garnishment procedures are also preempted. Such laws are said to "relate to" employee benefit plans because they would impair the Congressional purpose, embodied in § 514(a), of limiting and unifying administrative burdens on ERISA plans. *See* Brief of the United States at 8-9; Brief of Petitioners at 15. This Court should find that generally applicable rules of state procedure, including those in aid of execution of judgments, do not impermissibly burden and do not "relate to" ERISA plans. Any other construction of this clause would require the preemption of procedures Congress clearly intended to preserve.

1. Generally applicable rules of state procedure, including those in aid of execution of judgments, do not "relate to" employee benefit plans

This Court has often been asked to define the boundaries of § 514(a). On a number of occasions, the Court has found that

---

[24] The Georgia statute relates to "plans" and not merely "benefits" and is therefore outside the scope of the preemption provision as construed by this Court last term in *Fort Halifax Packing Co. v. Coyne*, ____ U.S. ____, 107 S.Ct. 2211 (1987). *See* Brief of Amicus, National Conference of State Legislatures at 9-10. The Georgia statute is directed at the availability of garnishment of an ERISA "plan", Ga. Code Ann. § 18-4-22.1. *See Fort Halifax*, 107 S.Ct. 2218 & n.8 (emphasizing that the state law was not preempted because it did not require payments of benefits through a *plan*).

substantive laws of the states were preempted, but it has certainly never found—and should not find—that a state procedure of general application,[25] not in conflict with any provision of ERISA,[26] is a law which relates to ERISA plans within the meaning of Section 514(a).

The conclusion that Congress did not intend to include state procedural laws of general application within the scope of laws which "relate to" employee benefit plans, is persuasively established by the fact that Congress preserved concurrent jurisdiction in the state courts for certain actions under ERISA. § 502(e)(1), 29 U.S.C. § 1132(e). *See Pilot Life Insurance*, 107 S.Ct. 1557, (quoting legislative history confirming congressional intent to preserve state court jurisdiction.) As this Court emphasized in *Franchise Tax Board*, Congress did not "go so far as to provide that any suit against [an ERISA plan] must be brought in federal court." 463 U.S. at 21. The preservation of state jurisdiction necessarily entails the preservation of state procedures. *See Pilot Life Insurance*, 107 S.Ct. at 1557-58 (stating that Congress authorized the courts to develop "federal *substantive* law") (emphasis added). *See also Avco Corp. v. Aerolodge No. 735*, 390 U.S. 557, 560 (1968) (stating that an

---

[25] A rule of state "procedure" which is not applicable to a general class of cases, but only to ERISA plans, should be characterized as a law which "relates to" an ERISA plan and should be preempted. The state's interest in regulating its own jurisdiction and procedures does not extend to fashioning distinct rules of process for ERISA plans—an area properly reserved to Congress. Cf., *Campbell v. Haverhill*, 155 U.S. 610, 614-15 (1895) (indicating that state statutes of limitation should bind federal courts only to the extent they are "uniform in their operation upon state and Federal rights and upon state and Federal courts").

[26] To the extent Congress has specified a certain rule of procedure expected to govern ERISA actions, such as a statute of limitations, a state rule on the same subject should also be characterized as a law which "relates to" ERISA plans. *See, e.g., Alessi, supra*, (holding that state laws on subjects expressly considered by Congress "relate to" employee benefit plans.)

action under § 301 of the Labor Management Relations Act—a model for ERISA—is "controlled by federal *substantive* law even though it is brought in a state court") (emphasis added).

Procedures in aid of execution of judgments are no less "procedures" than rules governing the entry of a default judgment. *See* Federal Rule of Civil Procedure 69 (governing "procedures" in aid of execution of judgments obtained in federal court, including garnishment). Since the statutory scheme demonstrates that a state procedure requiring the entry of a default judgment for failure to answer does not "relate to" an ERISA plan simply because it may be applied to an ERISA plan in a particular case, a state procedure for executing judgments also does not "relate to" a plan.

2. Construing § 514(a) to preempt garnishment in this case would necessarily result in the preemption of all procedures in aid of execution of judgments against ERISA plans—a result which Congress could not have intended

The construction of the preemption language advanced by the United States should be rejected because it would necessarily preclude the availability of any procedures, state or federal, for executing *any* judgment against an ERISA fund. This result arises out of the construction advanced by the United States for two reasons. First, there is simply no logical way to construe the English language so that garnishment or attachment laws "relate to" benefit plans when they are invoked by creditors of the beneficiaries, but not when they are invoked by beneficiaries or creditors of the Fund itself. Second, if state procedures in aid of execution of judgments are preempted, then there would be *no* procedures available to enforce judgments against plans because federal courts simply do not have any statutory, procedural, or implied common law powers to create remedies in aid of execution of judgments. *See* Federal Rule of Civil Procedure 69 (requiring federal courts to apply the "procedure of the state" in which the Court is sitting in proceedings on execution of judgments); *Huron Holding*

Corp. v. *Lincoln Mine Operating, Co.*, 312 U.S. 183 (1941) (holding that federal courts have no power to issue remedies of attachment different than that established by state law procedures).[27] Congress could not have intended this result. Congress would not have created federal causes of action for beneficiaries to assert against a plan for failure to pay benefits but preempted the only means the beneficiary would have to enforce the judgment when the plan refused to pay. The construction advanced by the United States would also preclude a creditor of a fund, such as an attorney or accountant, from any recourse on an unpaid judgment, even in a case such as this, where the trust agreement expressly authorizes payment of plan creditors from the assets of the fund and does not extend any anti-alienation clause to plan creditors. *See* Trust Agreement at Article VI ¶3(l) and Article VII ¶5, Brief of Petitioners at 14a, 18a.

Since a differentiation among the rights of various creditors to invoke execution procedures against an ERISA fund cannot be based upon a reading of the words used in the preemption clause, it could only arise out of a substantive Congressional intent to make such distinctions. As set forth, however, the substantive terms of ERISA indicate that Congress did not intend to protect beneficiaries from creditors' claims. The preemption clause cannot be used to create this result without impairing the statutory scheme.

3. § 514(a) should not be read to preempt state garnishment laws because this would render part of § 206(d) superfluous

This Court has previously rejected a construction of § 514 which would render another provision of the Act "redundant".

---

[27] When Rule 69 was adopted, the Committee intended to codify the prior practice of using state law procedures because the "Committee believed that the development of a series of rules on supplementary proceedings would be impractical and onerous in that such rules would have to be relatively detailed in order to meet the diverse situations in various states." 7 Moore's Federal Practice ¶ 69.03[1] at 69 (2d ed. 1985).

Metropolitan Life Insurance Co. v. *Massachusetts*, 471 U.S. 724, 736 (1985). In this case, if § 514(a) were construed to preempt all garnishment procedures, then it would have been "redundant" for Congress to expressly preclude involuntary alienation of pension benefits in § 206(d).[28] The United States suggests in its brief at 21 that this redundancy was simply an oversight. The Congressional approach to the 1984 amendments, however, confirms that Congress viewed § 206(d) as the section governing both voluntary and involuntary alienation, and § 514 as the section governing preemption of substantive state laws. Those amendments, included in the Retirement Equity Act of 1984, Pub. L. No. 93-397, § 104(b), 98 Stat. 1436, 29 U.S.C. (& Supp. III) 1144(b)(7), were enacted for the purpose of preserving the substantive state law of domestic relations and permitting alienation of pension benefits for qualified domestic relations orders. If the United States were correct that § 514(a) was intended to preempt all procedures governing involuntary alienation, and the inclusion of that subject in § 206(d) was an oversight which arose out of last minute changes in 1974, then in 1984 Congress presumably would have amended § 514 to preserve the substantive laws governing domestic relations and the procedural laws needed for their enforcement, and amended § 206(d) to eliminate the prior redundancy by providing that the section only had application to voluntary alienation.

Congress did not do this. Instead, the legislative history demonstrates that the amendment to § 514 was made for the purpose of preserving the substantive law of domestic relations. Qualified domestic relations orders preserved under § 514 encompass far more than the garnishment of plan benefits to satisfy family support obligations. Such orders can create rights in alternate payees, apportion benefits between the beneficiary and alternate payees, determine for what period

[28] None of the parties dispute that § 206(d) was intended to preclude involuntary alienation of benefits. *See* Brief of the United States at 21; Brief of Petitioners at 8 n.6.

payments should be made to alternate payees and impose notification and other duties upon plan administrators. The House Report states that the purpose of the amendment was to clarify that "state domestic relations law is not preempted by ERISA" with respect to qualified domestic relations orders since the "general policy underlying the bill's provisions is that the domestic relations court is the appropriate forum to balance the equities between the parties and settle all controversies." H.R. Rep. No. 655 Pt. 1, 98th Cong., 2d Sess. at 22, 39 (1984).

Rather than supporting the argument that state garnishment procedures are preempted, the amendment presupposes the existence of such procedures, since the amendment can have no effect unless state garnishment procedures are operative. See S. Rep. No. 575, 98th Cong., 2d Sess. at 18 (1984) ("Because rights created, recognized, or assigned by a qualified domestic relations order, and benefit payments pursuant to such an order, are specifically permitted under the bill, State law providing for these rights and payments under a qualified domestic relations order will *continue* to be exempt from Federal preemption under ERISA") (emphasis added). Thus, the amendments provide no support for the United States' construction of § 514.[29]

4. Subjecting welfare plans to state procedures governing the execution of judgments does not impermissibly burden those plans

The central thesis of the position advanced by the United States and petitioners is that Congress intended to protect

[29] The United States nevertheless relies on a statement in a committee report expressing approval of the decision of the Ninth Circuit in *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 679 F.2d 1307 (9th Cir. 1982), *vacated*, 463 U.S. 1 (1983) preempting a state tax levy on a welfare benefit fund. *See* Brief of United States at 18. Because "legislative observations ten years after passage of the Act are in no sense part of the legislative history", especially where as here, the Congress disavowed any intent to change the scope of the clause as originally enacted, the statement is not entitled to weight. *United States* v. *McMann*, 434 U.S. 192, 200 n.7 (1977).

plans and their trustees from the burdens of complying with garnishment proceedings governed by different laws in different states. Brief of Petitioners at 17-18; Brief of United States at 15. There can be no dispute that a primary purpose of ERISA preemption was to eliminate the burden of "inconsistent state and local regulation of employee benefit plans." *Fort Halifax Packing Co.*, 107 S.Ct. at 2216. There also can be no dispute, however, that Congress did contemplate the imposition of some burdens attendant to state law compliance. *See, e.g., Shaw*, 436 U.S. 85 (finding Congress intended to subject benefit plans to the burden of complying with state claims of employment discrimination). The issue then is whether the particular burdens imposed by state garnishment procedures are either among those Congress considered permissible, or among those considered burdensome enough to mandate preemption. An analysis of the actual burdens imposed by the Georgia garnishment procedure readily demonstrates that the purposes the preemption clause were designed to foster would not be frustrated by the preservation of state garnishment procedures.

Garnishment, and other procedures for the enforcement of judgments, have long been recognized as "part and parcel" of the judicial system in the United States. *Burr*, 309 U.S. at 246. This Court rejected arguments advanced by instrumentalities of the United States that garnishment imposed "heavy burdens" which would "impede the . . . functions" Congress intended them to perform, finding that these burdens were simply those incident to litigation generally. *Burr*, 309 U.S. at 246; *U.S. Postal Service*, 467 U.S. at 520. The garnishee, as in this case, is simply required to compute the benefit *already due* the debtor/employee, compute the percentage subject to garnishment, and make the payment to the Court. Ga. Code Ann. § 18-4-82, 84. In fact, every burden identified by the petitioners and the United States—with the sole exception of the calculation of the percentage of benefits exempt from garnishment—is either (1) eliminated by creation of uniform substantive law and the preemption of state law governing the enforceability of

spendthrift clauses;[30] (2) a function which the trustees would have to perform in the course of administering the trust in any event;[31] or (3) a burden no greater or different than that imposed by having to respond to litigation generally[32]—a burden expressly foreseen and permitted by Congress. *See* discussion *supra* at 11-12, 23-24.

The sole burden imposed by garnishment which goes beyond those ordinarily attendant to trust administration or legal process is the computation of the exempt percentage of benefits. This "burden" involves the application of a simple mathematical

---

[30] The petitioners' complaint that garnishment would embroil the plan in "state substantive law" governing "spendthrift provisions" which would inevitably lead to "conflicting decisions", Brief of Petitioners at 17, is answered completely by the preemption of the state substantive law, as set forth *supra*. Similarly, the concern that trustees could be liable under state law for failing to assert objections on behalf of the debtor, a risk petitioners describe in their brief at 15 n. 10 as "admittedly small", would also likely be governed by federal substantive law. *See Mass. Mutual Life Ins. Co.* v. *Russell*, 471 U.S. 134 (1985) (holding liability of trustee governed by federal law.)

[31] The "burdens" in this category relied upon by the United States include the necessity for confirming the identity of the debtor, calculating the entitlement, and making the payment. Brief of United States at 12. This Court has already noted that "determining exactly what property forms the subject matter of the trust and who are the beneficiaries" are among the fundamental "common law duties of a trustee". *Central States*, 472 U.S. at 572. Whether this is done at the request of the creditor or the beneficiary simply should make no difference under ERISA—unless Congress intended to protect welfare plan beneficiaries from creditors—which it did not.

[32] The identified "burdens" of having to answer the complaint in 45 days, being subject to a default for failure to answer, and the potential loss of the right to reimbursement for the costs of garnishment in the event the answer is not properly prepared (like the loss of the right to "costs" for failure to apply in a proper or timely fashion), *see* Brief of United States at 12, are indistinguishable from the burdens associated with legal process generally.

formula which can be performed in a matter of minutes, if not less. Moreover, it is a burden which Congress itself has imposed uniformly on all employers.[33] See 15 U.S.C. § 1671 and discussion *supra* at 17. Since the only variations among the states will be the content of the formula applied for computing the exemptions and the rules of procedure for responding to the garnishment summons—a variation inherent in the establishment of concurrent jurisdiction—the preservation of generally applicable state garnishment procedures simply does not obstruct the Congressional purpose of protecting trusts from "inconsistent state and local regulation". *Fort Halifax*, 107 S.Ct. at 2216. Congress has permitted similar or even more intrusive burdens than those in issue, including, for example, garnishment of pension plans for domestic relations orders, (§ 514(b)(7), 29 U.S.C. § 1144(b)(7)); garnishment for federal tax levies (26 C.F.R. § 1.401(a)-13(b)(32)); the obligation to respond to state administrative proceedings investigating employment discrimination, (*Shaw*, 463 U.S. at 102); and the obligation to comply with state laws regulating insurance (§ 514(b)(2), 29 U.S.C. § 1144(b)(2)). This Court should accordingly conclude that Congress did not find that state garnishment procedures "relate to" employee benefit plans.

CONCLUSION

For the reasons set forth this Court should affirm the judgment below.

Respectfully submitted,

MAUREEN E. MAHONEY
LATHAM & WATKINS
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505
(202) 637-2200

---

[33] The IRS has recognized that Congress did not intend to permit employers to evade legal obligations by distributing employment compensation through trust plans. *See* Treas. Reg. § 31.340(a)-1(b) and Rev. Rul. 57-316, 1957-2 C.B. 626 (finding vacation trust fund is the "employer").